DOCUMENT RESUME

ED 306 748 EC 212 812

TITLE	Hearing on the Commission on Education of the Deaf and Special Education Programs. Hearing before the Subcommittee on Select Education of the Committee on Education and Labor. House of Representatives, One Hundredth Congress, Second Session.
INSTITUTION	Congress of the U.S., Washington, D.C. House Committee on Education and Labor.
PUB DATE	30 Mar 88
NOTE	334p.; Serial No. 100-79. Some pages contain small, light type.
AVAILABLE FROM	Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC14 Plus Postage.
DESCRIPTORS	*Deafness; *Disabilities; *Educational Practices; Elementary Secondary Education; *Federal Legislation; Hearings; Preschool Education; Program Implementation; *Public Policy; *Special Education
IDENTIFIERS	Congress 100th

ABSTRACT

This hearing was held to examine education programs for individuals with deafness or other disabilities. The hearing sought testimony concerning implementation of federal policies to ensure a free appropriate public education to children with disabilities. Contained in this volume are transcripts of oral statements and copies of prepared statements, letters, and supplemental materials, submitted by: (1) members of the Commission on Education of the Deaf; (2) representatives of the federal government (Madeleine Will, Assistant Secretary of the Office of Special Education and Rehabilitative Services, and Thomas Bellamy, Director of the Office of Special Education Programs (OSEP); (3) representatives from the National Technical Institute for the Deaf, California State University at Northridge, and Gallaudet University; (4) representatives from private organizations including the Policy Center for Children and Youth, National Early Childhood Technical Assistance System, Corporation for Public Broadcasting, National Center for Deafness, National Captioning Institute, and National Association of State Directors of Special Education; (5) parent advocates; and (6) a private consultant involved with monitoring OSEP programs, David Rostetter. (JDD)

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HEARING ON THE COMMISSION ON EDUCATION OF THE DEAF AND SPECIAL EDUCATION PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON
EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, MARCH 30, 1988

Serial No. 100-79

Printed for the use of the Committee on Education and Labor

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HEARING ON THE COMMISSION ON EDUCATION OF THE DEAF AND SPECIAL EDUCATION PROGRAMS

WEDNESDAY, MARCH 30, 1988

U.S. House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:28 a.m., in room 2261, Rayburn House Office Building, Hon. Major R. Owens [chairman of the subcommittee] presiding.

Members present: Representatives Owens and Bartlett.

Staff present: Maria Cuprill, staff director; Laurence Peters, legislative counsel; Pat Laird, legislative analyst; Bob Tate, legislative analyst; Jillian Evans, committee clerk; Gary Granofsky, research assistant; and Sally Lovejoy, minority legislative associate.

Mr. Owens. The hearing of the Subcommittee on Select Education will please come to order.

Earlier this month, a remarkable event happened which has created an ideal atmosphere for this hearing, the movement of students, faculty, and staff of Gallaudet University against an entrenched philosophy that deaf people were not capable of governing their own programs. Their board of trustees, repeating history, selected a hearing president with no background in education of the deaf or knowledge of sign language.

The students, faculty, and staff were told that "since the university is an excellent institution, regularly producing outstanding graduates, it is only a matter of time until the school has a deaf president." Officials were saying, as they have before, that now was not the time.

At one point in American history, black people were also told that now was not the time to demand an end to racial discrimination, and the great civil rights leader, Dr. Martin Luther King, Jr., countered with the following statement: "When you are forever fighting a degenerating sense of 'nobodiness,' then you will understand why we find it difficult to wait."

For too long, our society wrongly perceived those in the deaf and disability communities as "nobodies" incapable of assuming leadership roles, even in their own institutions. Understandably, the Gallaudet community found it difficult to wait for the selection of a deaf president to head the leading educational institution for deaf people. As a statement by the Gallaudet Deaf President Now Council put it, the issue was "not simply a college hiring decision but a statement for deaf people throughout the nation and the world."

The concerns of our first two panels are closely related to this profound statement of deaf people. Our remaining panels will expand in scope to cover a broader range of programs for persons with disabilities.

The year 1975 marked a revolutionary change in the history of American education and disability policy. Our nation realized that education for children with handicaps was inferior to that of non-handicapped children and educationally and socially ineffective if not positively harmful to the development of children with handicaps.

We created a new Federal policy which guaranteed all children with handicaps the right to a free appropriate public education and, to the maximum extent appropriate, that that education should take place with their non-handicapped peers.

In order to more effectively implement these principles and as a means of protecting and making meaningful these rights, we required that the educational program for each child should be written on the basis of that child's need, and we installed a due process procedure providing recourse for grievances. Congress and the Department of Education developed a set of standards and requirements that would enable the Federal Government to effectively oversee the implementation of this new policy.

One day in the not so distant future, we may well look back to the recent events at Gallaudet as a watershed mark in the history of education for deaf people. It seems appropriate at this time both to review the assessment and recommendations offered by the Commission on Education of the Deaf and to review also the effectiveness of the Federal monitoring system intended to make meaningful the rights established in law in 1975.

As with many of our oversight hearings on the activities of OSERS units like OSEP, our paramount concern is for those who are serviced by the unit in question. In this case, it is the 4.2 million young people with handicaps across the nation and their parents who depend on OSERS to monitor and review the States' educational efforts on their behalf.

OSERS' responsibility to review State programs to determine their compliance with Public Law 94-142 is the cornerstone for the protection of all children with handicaps. This requirement is designed to ensure that the State education agencies have fulfilled their responsibilities to serve children and youth with handicaps.

The second part of today's oversight effort will examine the effectiveness of this effort.

I yield to Congressman Bartlett for an opening statement.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Welcome to the Congressional committee. I know a little bit of sign. That is all I know. [Applause.]

I have been practicing that all week.

I am especially pleased to be here today and want to welcome all of the witnesses and thank Chairman Owens and his excellent staff for a very well rounded and complete panel of witnesses as we enter into this phase of our hearings.

The witnesses today are appearing before the subcommittee to discuss the Commission of the Deaf report entitled, "Toward a Quality Education of the Deaf" and to review the monitoring system in early intervention and preschool programs under the jurisdiction of the Office of Special Education. We have a full day ahead of us.

I particularly want to welcome Irving King Jordan, the newly appointed and first deaf president of Gallaudet University and Greg Hlibok, President of the Gallaudet Student Government. I congratulate both of you, as the chairman did, in reaching the goals that you set for the university.

In addition to Dr. Jordan's appointment, the Chairman of the Board of Trustees is deaf, and the Board has agreed to review the issue of having the majority of the Board members be hearing impaired. Through your leadership and the support of the deaf community nationwide, these achievements were made without Congressional intervention, and we are proud of you.

I do commend the commission members and their staff on completing this report on time and within the budget and according to the mandates set by Congress. This report will provide the Congress with the information that we need to develop legislation that will address the specific educational needs of the hearing impaired.

Of particular interest to me is the need to increase the literacy rate among deaf adults and strengthening educational and vocational outreach services to low achieving deaf adults. Seventy percent of hearing impaired high school graduates cannot attend a post-secondary educational institution because their reading levels are still at a second or third grade level. This is unacceptable; it has to change.

Of the remaining 30 percent who do go to college, 70 percent drop out. Outreach services are essential to serve this population so that they can obtain competitive employment. I want to explore the commission's recommendations on outreach services and continued adult education during this hearing.

The second part of the hearing today will look at the monitoring system of Public Law 94-142 by the Office of Special Education. I believe that monitoring by the Department has improved since revisions were made in the system in 1985, but there are still improvements to be made.

I want to explore at this hearing and subsequently how the Federal Government can work with the States to shorten the time it takes to complete the process and improve the communication between States and the Department during the process. This hearing should focus on what changes can be made so that the best education can be provided to handicapped children.

We approach Public Law 94-142 today with an understanding that it works and it works rather well, and it is a major step forward from what we used to have prior to Public Law 94-142, but we also approach it with an understanding that the status quo can always be improved.

I recall my first introduction to that subject, although I had been working with and familiar with Public Law 84-142, when I came on the committee in 1983. I attended a large banquet in Washington commemorating one of the anniversaries of Public Law 94-142, and I sat with a group of parents and special education teachers at a table at the breakfast. As we talked over breakfast, I filled up three index cards front and back with suggestions and, in some cases, insistent demands for how to improve the workings of Public Law 94-142, and then we settled back to hear the speeches.

For the next 30 minutes, we heard that Public Law 94-142 was absolutely perfect and that nothing should ever be changed, not so much as a semicolon. We all applauded and got up to leave but not my table. I made them sit and explain to me the disparity between what I had just heard informally and then formally.

They said, and it is accurate, that there is always a need to make sure that we hold onto the gains that we have as we set out to improve and make new gains for the future. I think that is correct, but I don't think it is a reason not to try to improve the status quo.

In addition, I will be interested in hearing the status from the Assistant Secretary on the early intervention and preschool programs. These programs, created by this subcommittee, are essential. The Federal programs were created by this subcommittee. We were following the lead of a number of pioneering States that were ahead of us. These programs are essential in providing services to infants, toddlers, and preschoolers so that when they enter school, their special education needs will be less.

In my own State of Texas, the Federal early intervention program has had a tremendous and positive impact, providing some $3 million for direct services and creating 1,000 new slots for infants in just the first year of operation. I want to find out if other States are having similar results and if families of handicapped infants, toddlers, and preschoolers are benefitting from these programs.

I have met and visited with a number of these children who have had the benefit of early childhood intervention, and one can markedly see the progress and see the difference that it has made in their lives.

So, I thank the chairman for holding these extensive oversight hearings and look forward to hearing the testimony today provided by our expert witnesses.

Thank you, Mr. Chairman.

Mr. OWENS. Thank you, Mr. Bartlett.

For our first panel, we are pleased to welcome three members of the Commission on Education of the Deaf, Mr. Frank Bowe, chairman of the Commission; Mr. Bill Gainer, a member of the Commission; and Mr. Henry Klopping, a member of the Commission.

Gentlemen, please be seated.

We have a copy of your joint testimony, and your prepared statement will be inserted into the record immediately following your oral presentation. Please feel free to elaborate as you see fit but try to confine your remarks to no more than about 7 minutes each.

Mr. Bowe.

STATEMENT OF FRANK BOWE, CHAIRMAN, COMMISSION ON EDUCATION OF THE DEAF, ACCOMPANIED BY BILL GAINER, COMMISSION MEMBER; AND HENRY KLOPPING, COMMISSION MEMBER

Mr. BOWE. Thank you, Mr. Chairman.

The Commission appreciates the opportunity to testify this morning.

I want to begin by elaborating on some comments that both of the members of the Subcommittee made in your opening comments. In fact, I think both of you referred to the new developments at Gallaudet and the emergence of deaf leadership.

The Commission itself was appointed by the Members of the House, the Senate, and the President, and two-thirds of us are deaf or hearing impaired. Our top two staff positions, our staff director and our counsel, both are deaf. We believe this is an indication of Congressional interest in the proposition that people who are deaf can lead and take responsibilities for programs affecting their lives.

The important point now for the subcommittee is that this emergence of leadership by people who are deaf should not stop with Gallaudet. It should be exemplified in government programs if there are offices with responsibility for implementing programs connected with deafness.

I believe very serious efforts should be made to appoint people who themselves are deaf to lead those offices. We are not seeing very much of that. Government has not taken much of a lead.

Programs other than Gallaudet often have leaderships very much like Gallaudet's old leadership. The movement must not stop now.

Both of you made reference to literacy, reading levels, quality. I would like to comment briefly on those.

First of all, we found that captioning has a major potential for improving literacy, reading levels, and general education and entertainment by people who are deaf, by very young children who have normal hearing but are just learning to read, by senior citizens whose hearing is beginning to deteriorate, by people from foreign countries who have just come into this one learning English as a second language.

Captioning has a vast social potential for eradicating illiteracy in our country and should be used that way. It is not of benefit only to someone like myself who cannot hear the television set.

To advance that, the Commission made a number of strong recommendations. I would like to mention a few.

First, it is technologically possible for decoders, meaning the technology that receives the captioning and displays it on a television set, to be built into the TV set itself at very minimal additional cost. If that were done, you would have the decoder capability in most American family homes within a few years.

Parents would be able to turn on the captioning so their young children would learn to read English. Older people living alone would be able to turn it on to enjoy television, and people who are immigrants or just learning English as a second language would be able to use that technology, because it would already be in their homes.

We are strongly recommending this.

We also are very strongly recommending that the Federal Government assume leadership in increasing the availability of captioning. Less than about a third of major television network programs now are captioned. I cannot consider that to be enough.

We would recommend what we call a Corporation for Closed Captioning, CCC. We believe it should be an entity that would not itself perform captioning but, rather, would support captioning and advance the state of the art. We have had some informal discussions with the Corporation for Public Broadcasting, CPB, and we are very interested in the work they have done to date. The corporation has a perfect structure for what we are looking for.

It does captioning already. It works with commercial as well as with public television stations, and it does use private funding as well as government funding.

We have been told by the leadership of the Corporation for Public Broadcasting informally that they are very intrigued by our recommendations on captioning. If this subcommittee would want to discuss with your counterparts on the committee authorizing the Corporation for Public Broadcasting about assuming some of these roles, we believe that would be entirely appropriate. We would recommend that you do so.

I think Mr. Bartlett mentioned early intervention. The Commission was not satisfied with the quality of education for children who are deaf. It is a well known fact that in deafness, the earlier you intervene and teach language, the more successful the child will be.

We have very high hopes for Part H of Public Law 99-457, the early intervention program, but it is not enough, and we believe that, as good as Public Law 94-142 has been, it limits the ability of the Federal Government to encourage quality in special education. That is particularly true because the courts have ruled that "appropriate" in a free appropriate public education means a minimally acceptable quality of education. It means a Chevy, not a Cadillac.

We believe that people with disabilities in this country have a right to expect quality in education. Therefore, we have recommended that the Congress now take a look at the possibility of going beyond 142 in saying it is time now for quality in special education areas.

Mr. Chairman, one example of quality we found was from some students who came to us from the Lexington School for the Deaf in your district, and the students represented many minority groups, and they were doing very well despite the dual handicap of minority group status and deafness. More of that needs to be done. They need to be given the tools to succeed in society.

I want to add that Mr. Bartlett's leadership on SSI, supplemental security income, is something that we did look at, and the Commission is concerned about possible problems. When SSI is provided to children who are students at residential schools, there does seem to be some problem in motivation and some problem with the conflict between the desire to succeed in school and the desire to receive what the Federal Government and the States are offering them for nothing.

A number of school superintendents and parents and teachers told us that they believe that their children were being harmed. We believe solutions are possible, and we would hope that this issue will be studied in greater detail.

I am accompanied today by two very distinguished gentlemen who served with me on the Commission. To my left is Dr. Henry Klopping who is the vice chairperson of my Commission and served on the Pre-College Committee. I would like to allow Dr. Klopping to talk to you now about our pre-college recommendations.

Dr. Klopping?

Mr. KLOPPING. Thank you for giving me the opportunity to summarize some of the critical issues which serve as the basis for our recommendations at the pre-college level. The issues and concerns regarding infant through high school education of deaf children received more attention from parents, deaf consumers, professionals, and interested persons than any other issues faced by this Commission.

The first issue is that of appropriate education. Despite the Education of the Handicapped Act, we heard from hundreds of parents and educators who told us that many children who are deaf do not receive special education and related services appropriate to their unique needs.

The low incidence of deafness coupled with its unique ramifications means that the needs of these children are easily and frequently neglected.

The common sense solution for remedying past negligence requires, logically enough, that persons responsible for designing individualized education programs take into consideration factors such as the deaf child's severity of hearing loss; potential to use residual hearing; academic level and learning style; communicative needs and preferred mode of communication; linguistic, cultural, social, and emotional needs; placement preference; individual motivation; and family support.

Perhaps the issue that attracted the most attention of the Commission was that of least restrictive environment. This problem that has arisen related to the EHA is the widespread misinterpretation of least restrictive environment concept. Too often, deaf children have been placed in improper educational settings because educational agencies have prioritized placement with non-handicapped students in the least restrictive environment above placement which is most appropriate for the individual child.

These priorities must be reversed, and the Department of Education should emphasize appropriateness over least restrictive environment by issuing guidelines and standards for exceptions to the least restrictive environment requirement and a policy interpretation that that removal from the regular classroom does not require compelling evidence.

Children who are deaf need accurate educational evaluation and assessment by professionals who understand their unique needs and can communicate effectively. Parents with deaf children need assistance from educational agencies to remain informed about all educational placement options for their children.

Although Public Law 94-142 was supposed to give parents more rights, we heard much testimony that would indicate that parents of deaf children have less rights than before Public Law 94-142 in making decisions about their child's education. In educational placement decisions, parents are often treated as limited partners, not as equal partners, as the law suggests. Many of them are not informed of all placement options available to meet their child's unique needs.

The Department of Education should issue a policy that requires school personnel to inform parents of all options in the continuum of alternative placements during each IEP meeting.

Special schools or classes for deaf students need program standards by which to assess their ability to meet deaf students' needs. The Department of Education can take action, as recommended in our report, to meet those basic needs.

Moreover, as Dr. Bowe stated, a quality in deaf education bill should be approved by Congress to provide incentives to enhance the quality of services to students who are deaf. Public Law 94-142 provided access to education. Now in the time and the era of excellence in education movement, it is time for Congress to pass a quality in the deaf education act.

With regard to language acquisition, most children who become deaf before acquiring spoken language experience serious difficulties and delays in acquiring English language skills. The child without a strong language and communication base faces barriers that often lead to further educational problems.

For example, the educational system has not been successful in assisting the majority of students who are deaf to achieve reading skills commensurate with those of their hearing peers. Thus, language acquisition must be a top priority in federally funded research.

The native language of many persons who are deaf, American Sign Language, or ASL, also plays a vital role in the education of many children who are deaf. However, a bureaucratic gap exists between the protection afforded to members of minority groups who use a language other than English and the protection granted to students who are deaf who use ASL.

The Department of Education has not recognized ASL as one of the native languages for the purposes of the Bilingual Education Act. Thus, deaf children have not had access to many of the programs which could potentially benefit them.

The Department of Education should take positive action to encourage practices under the Bilingual Education Act to seek to enhance the quality of education to limited English proficiency children whose native language is ASL.

We also took a look at the Kendall Demonstration Elementary School and the Model Secondary School. These were originally established at Gallaudet University as model pre-college programs to prepare deaf students for advanced study and to stimulate program improvement nationwide. However, many elementary and secondary programs nationwide are now successfully preparing academically oriented deaf students for advanced study.

Educators currently state that they need programs and products directed toward other special subgroups within the deaf student population. These subgroups include students who have secondary handicaps, who are lower achieving academically, who are from non-English speaking homes, and who are members of minority groups.

The Congress should therefore amend the Education of the Deaf Act to set priorities at KDES and MSSD which are congruent with current needs.

Finally, strategies to prevent and identify hearing losses can be dramatically improved. This can be accomplished through the establishment of a national institute on deafness and other communication disorders within the National Institutes of Health to provide an essential research base to investigate the causes, diagnosis, detection, prevention, control, and treatment of hearing impairments.

Simultaneously, the Department of Education, in collaboration with the Department of Health and Human Services, can issue guidelines to assist States in implementing improved screening procedures which would allow up to 75 percent of newborn babies with severe hearing impairments to be identified at an early age.

With respect to post-secondary education, Bill Gainer's committee led an extensive effort by the Commission to examine the problems and to propose solutions. I will now turn the chair to him.

Mr. **Bowe**. Thank you.

Mr. Chairman, I would like to introduce the Chairperson of our Post-secondary Committee. His name is Mr. William Gainer.

However, before I do, he has just handed me a report which I would like to quote from briefly. It is issued by the Corporation for Public Broadcasting as their 1986 annual report called, "A Report to the People: Twenty Years of Your National Commitment to Public Broadcasting, 1967-1987."

On page 76, it says, "for hearing impaired television viewers, public television offers closed captioning. CPB's policy is that all appropriate CPB funded programming be captioned. CPB matching support was responsible for captioning more than 1200 hours of television programming in fiscal year 1986, 20 hours of captioned programs per week. This included 40 new programs plus public television staples like American Playhouse, Reading Rainbow, and all children's educational and new instructional television services. The Annanberg Corporation for Public Broadcasting project also captions its television based courses."

We will be happy to provide the subcommittee with this general information on our work with the corporation.

I now give you Mr. Gainer who headed our Post-secondary Committee.

Mr. **Gainer**. Mr. Chairman, Mr. Bartlett, our committee looked at an extensive amount of material and spoke with a large number of witnesses before our various meetings looking at this question of post-secondary education. I think the good news is that over the last 20 years since the Babbidge report was published, there has been a significant and really remarkable gain in post-secondary education for deaf students.

At the time of the Babbidge report, there was really only one institution, Gallaudet of course, which was specialized and served deaf individuals. Today, as a result of the Congress' efforts in funding post-secondary programs and in the Rehabilitation Act, section 504, there are now 150 institutions that serve deaf students, and, as of the most recent date, there are 7,000 post-secondary students enrolled.

That is a remarkable change from perhaps 300 students 20 years ago.

However, some of the 504 programs—and, in some ways, some of the post-secondary programs funded by the Congress itself—are not at a point where we think it is time to relax and rest. The Federal structure consists of basically six programs: the four post-secondary regional programs which are located around the country, Gallaudet, and NTID.

Although Gallaudet and NTID receive what we would consider adequate funding to provide the full range of services needed for their students and those are excellent programs, the post-secondary regional programs are stretched pretty thin. They get about $2 million out of the $73 million in Federal funding. They often have difficulty providing all of the services that they believe are necessary, and to do so, they very often have to turn down students that would like to attend those regional programs.

What that means is that students do not have the access to education within a reasonable distance of their homes. Many of the witnesses we talked to assured us that students very often want to stay within a reasonable number of miles from their homes, as we know hearing students do.

The other problem we found is that you have very different programs around the country. A student who wants to pursue vocational education has an excellent program in the Minneapolis/St. Paul area, but if they want a four-year baccalaureate program, they have to travel to the East Coast or the West Coast, and you find other problems with the kind of programs that are available to people around the country.

So, one of our major recommendations is that those post-secondary programs that are funded by the Federal Government be expanded to cover a full range of vocational, two-year, and four-year baccalaureate programs in each region of the country and that additional funding be provided to make that possible and to make it possible for those centers to serve a larger number of students.

I might note that they have a much lower per capita cost than the national NTID and Gallaudet programs because they receive a fair amount of State funding because of their parent institutions.

Even more important—and both of you alluded to it—is the post-high school population which is not capable of the kind of post-secondary programs that are funded at the Federal level. We estimate that there are 100,000 adults who have not made sufficient educational progress to function in the labor markets for whom their level of capability or their level of educational preparation is inadequate to go to the federally funded programs so that when the public schools fail those kids and those adults, they are shut out of the educational system.

It is not that there isn't some money out there to help them. You have JTPA, you have a whole range of rehabilitation and other services, student financial aid, that are available to these people just like any other student. However, the institutions or the delivery systems are not available there to take advantage of that funding. It would be a rare JTPA program that had the capacity to serve a very low-functioning adult who was reading at the third grade level or the second grade level or perhaps at no grade level.

That is the population that is now, as far as we can tell, completely unserved by Federal policy and certainly not well served by State and local policy.

To remedy that, we recommend a solution of ten regional rehabilitation centers that would be specifically geared to serve that population that needs substantial remediation in terms of communication skills and vocational skills, counseling, and other services to make them fully functional in society. If you could make any substantial percentage of that group taxpaying citizens, you would be way ahead of the game.

Estimates from past intervention programs are that 60 percent of that population could perhaps become taxpaying individuals. Most of those people, as Frank mentioned, are receiving SSI now and are not probably living the kind of lives that we would like to see our citizens live, even though many of them would be capable of working with appropriate education.

Finally, we made some recommendations that were specifically asked for in our charter where we were asked to look at these issues in terms of Gallaudet and NTID. The first is foreign students at these institutions.

Gallaudet presently has a fair number of foreign students. NTID has been precluded from admitting those students.

The Commission in perhaps a controversial stand has said that we think the subsidies should be essentially eliminated for foreign students because of the cost and because there are other needs for deaf people in this country that are not adequately served at this time. If you have to make a trade-off between foreign students receiving substantial subsidies and doing something about this adult population that is now not functioning in the marketplace, I think, from our point of view, it would be an easy choice.

So, we recommended that NTID be allowed to admit foreign students but that both institutions have to collect fees from those students that would essentially eliminate the Federal subsidy.

We made a similar recommendation regarding hearing students at Gallaudet. We see no particular purpose served by hearing students at Gallaudet. If Gallaudet had, for example, the 8 percent students that its policy would call for, you would be spending more than $1 million a year for hearing students. We don't believe that hearing students would pay the $20,000 a year that might take to defray the subsidy they receive now, and we believe that there are ample opportunities through exchange programs and other policies of Gallaudet to provide integration with hearing students for their student body.

We also believe that there are plenty of opportunities to pursue special education programs for the deaf at the graduate level at Gallaudet, your interpretive programs, and most of the careers in deaf education require graduate education anyway.

In terms of the RPEPD's, the regional programs, I have put together some numbers that will give you some idea of what it might cost to strengthen those programs. They now get about $3500 per capita. We think to provide adequate support services and different kinds of programs, it might run more like $5000. If you were to increase the number of students in those programs from 600 to 1000, you would probably be talking an increase in cost of $3.5 to $3 million.

That concludes my remarks, and we are prepared to answer any questions you may have at this time.

Mr. Bowe. Mr. Chairman, we will take any questions you or Mr. Bartlett may wish to have.

[The prepared statement of the Commission on Education of the Deaf follows:]

TESTIMONY PRESENTED TO THE
HOUSE SUBCOMMITTEE ON SELECT EDUCATION

MARCH 30, 1988

by the

COMMISSION ON EDUCATION OF THE DEAF

Frank G. Bowe, Commission Chairperson
Henry Klopping, Member, Pre-College Committee
William Gainer, Chairperson, Postsecondary Committee

INTRODUCTION

Good morning. I am pleased to be here, representing the Commission on Education of the Deaf, which the Congress created in August 1986 [PL 99-371] and charged with making a report on education for people who are deaf -- at all levels, for all ages, in all forms and media. Our report, Toward Equality: Education of the Deaf, is the basis of today's hearing, and includes specific recommendations for you in Congress, and for the Executive Branch. If implemented, these recommendations can produce a quantum leap in educational quality and opportunity for deaf Americans.

Joining me this morning are William Gainer, Chairperson of our Postsecondary Programs Committee, and Henry Klopping, member of our Precollege Programs Committee.

I am pleased to tell you that we completed our work on time and on budget. Our twelve members -- four appointed by the Senate, four by the House of Representatives, three by the President, and one by the Comptroller General -- worked hard to achieve this result. Our staff did a superb job in supporting us, and I thank them.

The events at Gallaudet University early this month drew attention to deafness here on Capitol Hill, across the nation, and all over the world. The students, faculty, staff, alumni, and friends of the University accomplished much that is important, both on campus and elsewhere.

Our report includes recommendations for Gallaudet. But it goes far beyond Gallaudet. We find that in preschool education, in media and technology, and in research, we as a nation are not doing the job.

We made an extraordinary effort to involve deaf consumers, parents, educational administrators, educators, rehabilitation program administrators, interest groups, and others in all of our work. In February last year, we held a public meeting in Bethesda, Maryland at which we heard from representatives of the Department of Education, Gallaudet University and its model schools, the National Technical Institute for the Deaf in Rochester, organizations interested in special education generally, as well as Deaf Pride and other organizations and individuals interested especially in minority groups and parents, professionals, and consumers. Four other public meetings followed, in which we heard from all of the federally funded postsecondary programs, from many educators and special school administrators, organizations representing parents and consumers, and others.

We published a list of questions that emerged from these meetings in the Federal Register and circulated thousands of copies. The response was tremendous. As our work continued, we published our preliminary findings and draft recommendations, again circulating copies nationwide. When one or more of our draft recommendations might affect a program -- Gallaudet, for example -- we also sent a letter of inquiry calling their attention to the draft recommendations and specifically requesting input.

We received many thousands of pages of comments from individuals and programs from coast to coast. From Gallaudet alone, we received well over 1,000 pages of documents. The Education Department provided letters responding, point by point, to our draft recommendations. In addition, we heard testimony from Mrs. Will, the Assistant Secretary, and from the Deputy Assistant Secretary, for OSERS in the Department.

We also researched the literature in special education, adult education, and deafness, ultimately citing some 100 primary sources of data. We performed demographic and technical analyses to supplement those sources.

We carefully considered these comments to shape the report you now have. Because of this very open process, we are not only able to present to you our recommendations, but we are also in a position to predict how they will be received when you act on them. It is difficult for me to imagine how we could have operated a more open and fair process.

Let me turn now to our principal findings.

We found, generally, that the Congress has done much to create needed programs, and to fund them each year. The Congress has not, however, provided sufficient guidance, nor have you or the Department of Education exercised enough oversight to keep those programs on track. Largely because of that, we found that the state-of-the-art in education of people who are deaf is unsatisfactory. The roots of the problem are in the preschool, elementary and secondary years.

The Precollege Programs Committee chaired by Gertrude Galloway addressed and made recommendations in these areas.

PRE-COLLEGE EDUCATION

In formulating our recommendations toward equality for preschool, elementary, and secondary students who are deaf, we have studied, discussed, and debated at length what we might propose to effect the greatest possible good in a maximally feasible way. The result is a set of recommendations which require neither legislative reversals nor substantial funding increases. Rather, the recommendations we seek to implement balance support and expansion of the fundamental concept of appropriate education with clarification of the "least restrictive environment." They emphasize facilitating English language acquisition while respecting the position of American Sign Language. They maintain a role for Gallaudet University's model programs while establishing improved priority-setting and reporting procedures. In addition, they advance significant prevention and early identification efforts.

Appropriate Education

Since the 1965 Babbidge Report, the most important federal legislation affecting the education of children who are deaf has been the Education for the Handicapped Act, or EHA, which sought to assure all handicapped children a free, appropriate public education. Despite the EHA, we heard from hundreds of parents and educators who told us that many children who are deaf do not receive special educational and related services appropriate to their unique needs. The low incidence of deafness, coupled with its unique ramifications, means that the needs of these children are easily and frequently neglected. The common-sense solution for remedying past negligence requires, logically enough, that persons responsible for designing individualized education programs take into consideration factors such as the deaf child's severity of hearing loss, potential to use residual hearing, academic level and learning style, communicative needs and preferred mode of communication, linguistic, cultural, social, and emotional needs, placement preference, individual motivation, and family support.

Least Restrictive Environment

Another problem that has arisen related to EHA is widespread misinterpretation of the "least restrictive environment" concept. Too often deaf children have been placed in improper educational settings because educational agencies have prioritized placement with nonhandicapped students in the "least restrictive environment" above placement which is most appropriate for the individual child. These priorities must be reversed and the Department of Education should emphasize appropriateness over least restrictive environment by issuing guidelines and standards for exceptions to the least restrictive environment requirements and a policy interpretation that states that removal from the regular classroom does not require compelling evidence.

Center Schools

It may very well be that for many children born deaf, intensive, special instruction in language particularly, taking full advantage of Part H of PL 99-457, and using to the maximum extent appropriate the expert resources of center schools, is the approach of choice in the early childhood years. After such immersion, many will be ready for successful academic schooling, some in direct competition with students whose hearing is not impaired. This is one reason, among many, why special schools, and the federal government should nurture them as part of a spectrum of services needed to implement the EHA and its regulations.

Evaluation and Standards

Additionally, children who are deaf need accurate educational evaluation and assessment by professionals who understand their unique needs and can communicate effectively. Parents with deaf children need assistance from educational agencies to remain informed about all educational placements options for their children. Special schools or classes for deaf students need program standards by which to assess their ability to meet deaf student's needs. The Department of Education can take action, as recommended in our report, to meet these basic needs. Moreover, a "Quality in Deaf Education" bill should be approved by Congress to provide incentives to enhance the quality of services to students who are deaf.

Language Acquisition

With regard to language acquisition, most children who become deaf before acquiring spoken language experience serious difficulties and delays in acquiring English language skills. A child without a strong language and communication base faces barriers that often lead to further educational problems. For example, the educational system has not been successful in assisting the majority of students who are deaf to achieve reading skills commensurate with those of their hearing peers. Thus, language acquisition must be a top priority in federally funded research. The Congress and the Department of Education should ensure that the paramount concern of facilitating English language acquisition in students who are deaf (including vocal, visual, and written language) guides the implementation of exemplary practices, the establishment of program models, the design of curricula, materials, and assessment instruments, and the provision of professional and parent training.

American Sign Language

The native language of many persons who are deaf, American Sign Language, or ASL, also plays a vital role in the education of many children who are deaf. However, a bureaucratic gap exists between the protection afforded to members of minority groups who use a language other than English and the protection granted to students who are deaf and use ASL. The Department of Education has not recognized ASL as one of the native languages for the purposes of the Bilingual Education Act and thus deaf children have not had access to many of the programs which could potentially benefit them. The Department of Education should take positive action to encourage practices under the Bilingual Education Act that seek to enhance the quality of education to limited-English-proficiency children whose native language is ASL.

Kendall Demonstration Elementary School and the Model Secondary School for the Deaf

The Kendall Demonstration Elementary School (KDES) and the Model Secondary School for the Deaf (MSSD) were originally established at Gallaudet University as model pre-college programs to prepare deaf students for advanced study and to stimulate program improvement nationwide. However, many elementary and secondary programs nationwide are now successfully preparing academically oriented deaf students for advanced study. Educators currently state that they need programs and products directed toward other special subgroups within the deaf student population and their families. These subgroups include students who have secondary handicaps, who are lower achieving academically, who are from non-English speaking homes, and who are members of minority groups. The Congress should amend the Education of the Deaf Act to set priorities at KDES and MSSD which are congruent with current needs.

The pre-college programs should submit an annual report to the President and to Congress listing the critical needs of the population they serve, describes their programs and activities to meet those needs, and evaluates their effectiveness. Before reauthorization, or at least every 5 years, the Department of Education liaison office should coordinate the formation of an independent evaluation team to provide an objective assessment of the progress of the pre-college programs in meeting the identified critical needs and to delineate the critical needs to guide the programs during the next funding cycle.

Prevention and Early Identification

Finally, strategies to prevent and identify hearing losses can be dramatically improved. This can be accomplished through the establishment of a National Institute on Deafness and Other Communication Disorders, within the National Institutes of Health, to provide an essential research base to investigate the causes, diagnosis, detection, prevention, control, and treatment of hearing impairments. Simultaneously, the Department of Education, in collaboration with the Department of Health and Human Services, can issue guidelines to assist states in implementing improved screening procedures which would allow up to 75 percent of newborn babies with severe hearing impairments to be identified at an early age.

POSTSECONDARY AND ADULT EDUCATION

In the two decades since the 1965 Babbidge Committee Report was released, there has been great growth in the number of postsecondary educational programs for students who are deaf. In 1960, for example, Gallaudet University enrolled approximately 300 students with another 100 students attending other higher education programs scattered throughout the nation. Today, nearly 150 programs educate over 7,000 deaf students.

We can be proud of this growth which was sparked by a remarkable piece of legislation---Section 504 and other parts of the Rehabilitation Act of 1973. But although this has provided young deaf people with much wider choices, it turns out that the majority of the new programs fail to offer the range of support services necessary.

Congress funds 6 postsecondary programs--Gallaudet University, the National Technical Institute for the Deaf, and regional programs in California, Minnesota, Tennessee and Washington. Many of the students are clients of state-federal vocational rehabilitation programs. Gallaudet University and the National Technical Institute for the Deaf receive 97 percent of the federal funds set aside to educate postsecondary deaf students, and educate about half of the nation's deaf college students.

The remaining funds go to the regional programs to provide postsecondary services to roughly 600 students with a half million dollars for each program. The other 140 programs, housed in non-specialized higher education institutions, receive no direct federal subsidies for educating the other half of the population of deaf college students.

Many students, parents, and educators told us that most deaf students prefer to stay close to home to receive a college education. Yet the regional programs cannot always satisfy this preference because their host institutions do not offer a full range of curriculum choices and the smaller unsubsidized programs generally provide inadequate support services because they often do not have a "critical mass" of students to justify such an expenditure.

Expansion of Regional Programs

We propose that increased funding go to the regional programs to enable them to provide a full range of curriculum offerings from 2-year technical, to 4-year baccalaureate and continuing education programs within the metropolitan areas where they are centered. This would help correct the inadequate funding for the regional programs, allowing them to offer programs with both comprehensive support services and more complete academic choices.

We also recommend (1) that a fifth regional program be established in the southwest region of the United States to fill what we felt was a geographical gap in the current regional programs; and, (2) that a 5-year funding cycle replace the current 3-year cycle to permit greater program continuity and more stability for administrators, faculty, staff, and students. The host institutions of the regional programs should also drop out-of-state tuition requirements, which discourage equal access to these federally assisted programs.

Even with shortcomings in the postsecondary programs, however, the federal government does much more for high-achieving deaf students than it does for those whom the nation's schools have failed.

Comprehensive Service Centers

The postsecondary committee found there was a severe lack of vocational training opportunities for an estimated 100,000 deaf Americans across this country who are unemployed or seriously underemployed because the educational system has failed them. Often their only recourse is vocational training. However, although there are some small specialized programs, there are virtually no programs for this population.

Declining enrollments and the absence of other alternatives for vocational training tempt some colleges to admit these individuals, as seen by the high drop out rate for deaf postsecondary students--71 percent for baccalaureate candidates in 1985. Given proper training, it is estimated that more than 60 percent of individuals who are now unsuccessful in the labor market could obtain gainful employment.

Spending $73 million to educate fewer than 4,300 deaf college students while providing no adequate facilities for 100,000 deaf Americans who may not be college material but could very likely succeed in the workplace, is very shortsighted. We recommend establishment of one comprehensive service center in each of the ten federal regions. Each center would provide services ranging from initial vocational evaluations, to appropriate vocational training, to carefully-considered job placement and follow-up. Although these individuals qualify for job training programs, vocational rehabilitation, student aid and other programs, there are generally no facilities capable of serving them because of their limited educational progress and generally severe communication problems. We believe that careful federal investment in the vocational training of this population would pay dividends as these individuals find jobs and achieve a greater independence.

Finally, we have several recommendations to enhance the quality of the federally-funded postsecondary programs while making possible some cost savings.

Oversight of Federal Programs

First, we recommend that an office in the Education Department be staffed by experts on deafness who can manage grants and monitor programs at Gallaudet, NTID, the four RPEPDs, and MSSD and KDES; who can supervise interpreter, educator and rehabilitation counselor training programs; to coordinate independent evaluations of all these programs on a periodic and systematic basis. We do not stipulate any particular organizational structure. It is rather the effectiveness of the function that concerns us.

Admission Policies

The Commission was explicitly asked to advise Congress on admission policies of Gallaudet University and NTID. Gallaudet has in recent years admitted some baccalaureate students who are not deaf. We recommend that Congress discontinue this practice: federal funds should not be used to subsidize the college education of students who are not deaf.

Ten percent of Gallaudet's student body consists of foreign deaf students; NTID is not now permitted to admit foreign deaf students, but would like to do so. The federal government spends about $2 million annually to subsidize the education of foreign deaf students at Gallaudet, equal to the total support given to the regional programs. We recommend that admission of foreign students to Gallaudet and NTID be limited to no more than 10 percent of the students body at either institution, but that foreign students or their governments pay the bulk of the costs.

The Commission believes that, to some extent, the admission policies of these institutions are being driven by declining admissions with the effect that monies are being spent for other than American deaf students.

Deaf People in Policy-Making Positions

We offer two recommendations related to the extraordinary events witnessed early this month at Gallaudet. We believe the federally-supported programs should be guided to a significant extent by the people these programs educate. We recommend that a majority of the governing and advisory boards of Gallaudet, NTID, and the regional programs be comprised of individuals with hearing impairments. We also encourage these programs to increase their efforts to recruit, hire, and promote qualified deaf applicants and employees.

Congress and the President selected the members of this Commission. Two-thirds of our members are deaf or hard-of-hearing. Our two top staff positions are held by people who are deaf. There can be no doubt today that people who are deaf have the talent and education to perform any task.

RESEARCH

Research is important in all areas of education for people who are deaf. We want the best research to receive federal support--wherever that work is being done. At present, the bulk of research funds in deafness is provided, without competition, to Gallaudet and NTID. We recommend that a substantial amount of that money be available competitively.

PROFESSIONAL STANDARDS AND TRAINING

Nationwide professional standards as well as better training programs are needed. We recommend that standards and training programs be developed for specialized educators of deaf children, as well as for regular teachers in mainstream settings, with the inclusion of deaf adults as instructors in the training programs.

Few policies and certification requirements are set for interpreters in educational settings. We recommend the

Department of Education assist states in establishing standards for educational interpreters, as well as designing training programs.

TECHNOLOGY

One of our major findings is that technology has a critical role to play in education for deaf people at all levels and at all ages. Captioning of television is a crucial tool for preventing and ameliorating illiteracy. Computer speech recognition will someday make true integration into society, without the need for human interpreter assistance, not only possible but an everyday occurrence. Biofeedback via visual representations of speech can even today help many deaf people to learn how to speak more clearly.

Equipment Accessibility

We urge that schools and colleges receiving federal funds be required to follow the same electronic equipment accessibility provisions as federal agencies are now required to do under section 508 of the Rehabilitation Act Amendments of 1986. We urge the Congress to act quickly and decisively to provide these tools to people who are deaf--these technologies literally are our ears, our voices, our link to the world of tomorrow.

Captioning

We have several recommendations relating to TV captioning, to spur greater and more widespread use of captioning. First, we urge that the Congress mandate the Federal Communications Commission (FCC) to issue regulations requiring broadcasters and cable-TV programmers to caption their programming, as the FCC's voluntary approach is not working. Despite recent advances in captioning technology over the past decade, TV programming has not been captioned to the fullest extent. Less than one-third of the three major networks' total TV programming is currently captioned.

Second, we find that the current Federal funding mechanism which awards funds directly to captioners, stifles competition and keeps captioning rates artificially high. To ensure self-sustaining captioning services, we recommend establishment of a Corporation of Closed Captioning to coordinate the distribution of federal funds for captioning projects. The Corporation would not itself perform captioning services.

Third, despite recent decreases in the cost of decoders, the cost prevents many people from purchasing them. We recommend that the Congress require the FCC to issue regulations as it deems appropriate to make new TV sets capable of decoding closed captions, and that until such TV sets become widely available, current Federal funds for decoder development and manufacturing should be made available to increase the distribution of existing decoders.

CONCLUSION

Mr. Chairman, the Commission on Education of the Deaf performed its work during a time when Marlee Matlin won the Academy Award as best actress, when Ray Charles testified to this Congress that hearing impairment must be given a higher priority, when a deaf woman was named by the President's Committee on Employment of the Handicapped as the Handicapped American of the Year and when Gallaudet selected its first deaf president. Rarely has deafness been as visible in America as it is today. In the glare of that light we see our triumphs---and our shortcomings. It is our responsibility, and our privilege, to present to you a report summarizing both--and providing you with what we believe is a vital blueprint for action in the years to come.

Thank you, Mr. Chairman. We will be pleased to answer any questions you may have.

Mr. **Owens**. Thank you very much for your excellent testimony, and I congratulate you on the report that you produced in record time in comparison with other similar commissions and, I think, with a budget that was quite reasonable.

I suppose, Mr. Bowe, if we had to single out one recommendation alone and could only act on one of your recommendations, you would want us to act on the captioning proposal. The most good would be done for the most people by addressing ourselves to captioning.

Did I hear you correctly? And it sounds like a proposition that is doable and reasonable, and the subcommittee should devote some time and energy with work with the Corporation for Public Broadcasting. Do I understand you correctly?

Mr. **Bowe**. I have no trouble understanding you, Mr. Chairman, but I have difficulty answering you.

We did discuss our priorities, and we identified what we believed were the most important recommendations in preschool and elementary and secondary education. Separately, we identified our priorities in post-secondary education.

We did not narrow it down to one and only one. I think my distinguished colleagues here probably would each have their own single recommendation, so I would have to speak not for the whole commission in response to your question but for myself, and, then, if you will, ask them to respond.

I would think my number one recommendation would be something to do with language acquisition. As a person who became deaf very early in life, my ability to use the English language has made my life meaningful. It is the one thing that has helped me to whatever success I have had—the ability to read and write the English language.

To get the captioning, yes, is absolutely essential. Early intervention in whatever very intensive language learning opportunity may be possible I think would be absolutely critical. We make a number of recommendations to that effect.

Would my colleagues want to take a shot at one recommendation?

Mr. **Klopping**. The commission or the Pre-college Committee, in looking at the different recommendations, really feels that the emphasis needs to be placed on appropriate quality education for deaf children and that the policy of least restrictive environment is one that needs careful attention by the Congress and by the government, because those are intervening and prohibiting many deaf children from acquiring an appropriate education program.

Mr. **Owens**. What about technology and its ability to help accomplish this? Let me ask several questions in one.

What about the impact of technology? Should more resources be devoted to that? Has Gallaudet provided suitable leadership in that area?

I think at one point there was a recommendation that we sort of vulcanize the research and development effort. Should we take another look at that? Is this the time to vulcanize that kind of effort since we have limited resources? Do we need to centralize it more and try to get a greater impact from it?

Do we need to collaborate with foreign governments and foreign nations in this area of technology and research and development. At the same time we are discussing foreign students and the practicality of continuing to admit them, it occurred to me that here is an opportunity. We live in a global village. Everybody understands this with respect to the economy. Why not extend that to many other areas, including education? In an area like education of the deaf, it would help greatly to know what other governments are doing, what kind of research is being conducted throughout the world, what collaborative efforts are possible, et cetera.

It seems to me an institution like Gallaudet, a centralized effort, would play a major role in that.

Now, I have asked all these questions in one. You can sort them out as you see fit.

One question related to that is the lower—I didn't quite understand the statement about the lower per capita cost. You said the regional programs have a lower per capita cost, and then you said the reason for that is that they have a lower per capita Federal cost. Which is it? Is it that they have a lower per capita overall cost, or is it that the Federal Government's cost is lower?

Mr. GAINER. The Federal Government's cost at the regional programs is much lower because they are generally housed in institutions that receive State support, and that State support——

Mr. OWENS. But the cost of educating the student is about the same, the overall cost, Federal plus other sources?

Mr. GAINER. The overall cost at Gallaudet and NTID is somewhat higher than it is at the regional programs once you take out research and other functions that the regional programs don't have. I don't have the numbers right in front of me, but it is something like $20,000 or in that ball park for Gallaudet and NTID versus maybe $16,000 for the regional programs.

However, the Federal share for those regional programs is much lower. On average, it is $3500, because the students and the States are picking up a fair amount of that cost.

For example, in California, CSUN is a very large State system which has a specialized program for the deaf at Northridge. So, you are getting the States picking up a fair amount of the cost in those regional programs.

Mr. OWENS. It is my problem for lumping all those things together. If you want further clarification on my questions, you can ask me, but see if you can respond to the bigger question—concentration, decentralization.

Mr. BOWE. First of all, I would object to the term "vulcanization." I think what we are looking at in terms of technology, the bottom line is very simple. We have today technology that eliminates deafness.

To get the point across to you, I have a machine now that hears better than I will ever hear in the rest of my life and the life beyond. We have machines that talk, and they talk better than I talk. They talk in a male voice, a female voice, a child's voice, an Hispanic accent voice better than I am ever going to talk.

Our point with technology is that it hears, it speaks, in fact, it reads, too. We have machines that do these things.

I am not aware of more than one or two deaf people of any age in the United States who use this technology day to day, and they do that because the company they work for makes those kinds of machines. I do not have it myself. Children do not have it.

Our concern about technology is that the potential is so awesome. It must be tapped and used. We must find some way with public funding, private funding, some kind of stimulation program like the JTPA, tax credits, something to get that technology day to day all day in the hands of these children.

It is like the glasses that you wear. You do not wear your glasses two hours a week. It is the same fundamental thing.

I think creatively we can find ways to do it, and I think that the investment will be a fantastic investment, because it would mean real education, graduating with real abilities, and the ability to earn far more income over the course of a career than is possible now. The immediate question is funding it.

It can be done. We must be creative. This country has come up with many creative financing schemes for things it cared about. I think it should care about this one.

Do my colleagues have anything to add to that?

Mr. **Gainer**. You specifically asked about research, and it is a somewhat more narrow topic than the broad topic of technology, depending on how you look at it. We recommended that the present funding for research that goes through Gallaudet University be kept there, in essence, but put into a special center for deafness related research and that a much larger share of that money be provided to other researchers.

The reason for that is that we believe there should be competition for this money. We think that Gallaudet has shown its ability to compete for research monies so that it will still be able to provide competition for funds other than that they have now. They can still go to the Department of Education for grants. They can go to other Federal institutions which provide research funding.

However, the money that is set aside for research now for Gallaudet ought to be competitive to allow other centers around the country that do very important research in deafness to provide additional research.

Mr. **Owens**. Thank you.

Mr. Bartlett?

Mr. **Bartlett**. Thank you, Mr. Chairman.

Ladies and gentlemen of the Commission, you have laid before us a very full plate. The Commission's recommendations are quite well thought out. It may be one of the most important set of recommendations in this area that Congress has ever been presented with. So, my commendations go to you.

You have also laid before us a plate that is so full that, as the chairman attempted to do a little while ago, both you and I and Chairman Owens, at some point, are going to have to pick and choose in terms of prioritizing as to what we attempt to accomplish first or what we at least start on. So, I look forward to an on-going dialogue with you as far as where to start and where to press and some type of a time table.

Let me begin with some of your recommendations and just see if I can get them fleshed out in my own mind. I detect—but you can tell me if this is not true—that there was some controversy within the commission on your recommendation on least restrictive environment versus appropriate education. First of all, tell me if that was a section that was unanimous or if, in fact, that was controversial within the Commission and within the deaf community.

Mr. **Klopping**. The issue of least restrictive environment, as far as the Commission went, was a unanimous decision. Everybody supported the position of the Commission relative to the recommendations that were made.

Of course, this followed extensive communication. The Commission heard more on this issue than any other issue to come before us. It is the issue that attracts and requires attention not only of professional educators of the deaf but of the Congress and the Department of Education. So, it was unanimous in terms of the recommendations we have on least restrictive environment and on appropriate education.

The controversy is within the field of special education in general as to what is the least restrictive environment, and the Commission is supporting the fact that the least restrictive environment for a deaf child is that environment which meets the needs which are identified. Whatever is appropriate to meet the needs of that child is the least restrictive environment, but that is not the policy that we see emanating from OSERS, and that is not the word that is going out across this country.

As a result, many deaf children are being harmed by being in inappropriate educational environments.

Mr. **Bartlett**. So, the recommendation basically focuses on, in the Commission's words, "appropriate education in a continuum"—I believe that was the words that were used—"a continuum of alternative placements."

Mr. **Klopping**. We strongly believe that deaf children need all options available to them, that there are deaf children who function very well in the mainstream, but there are many deaf children who do not, and that the least restrictive environment for an individual child is based on the needs of that child. It could be the mainstream classroom, it could be a class for the deaf, it could be a special school for the deaf, but the needs of the child should drive the placement and that placement, then, is the least restrictive environment.

Mr. **Bartlett**. And it is your suggestion, then, that that continuum of services can change through the education of the child? That is to say, it could be a special classroom for the deaf in one school year or a separate school in one school year and then a mainstream classroom in another year?

Mr. **Klopping**. Absolutely, and that is why the Commission says and why we recommend that Congress and the Department of Education should require that all educational options be reviewed annually for parents. Right now, the law doesn't require that and the regulations don't require that. They are required only upon the child's admission into special education.

You are correct, Congressman. From one year to the next, the deaf child might need a different environment. This year, it could be that the mainstream classroom is the least restrictive environment for that child, but there could be needs that develop that require a different placement which then would become the least restrictive environment for that child.

Mr. **Bartlett**. The Department's regulations today provide that the LEA make a continuum of alternative placements available, the continuum to include regular classes, special classes, and special schools. The commission's point is that, even though—and I am paraphrasing—the Department's regulations say that, they are not being enforced that way or there is not sufficient emphasis on the continuum.

Is that what you are telling us? Because the regulations say it.

Mr. **Klopping**. Yes, they do. The problem is with the continuum where you go from—they have a cascade where they say the least restrictive environment is a regular classroom and then you go down the list and it becomes more restrictive. We are saying that is wrong. It is illogical to approach the situation that way.

What you need to do is take a look at the needs of the deaf child and then any one of these within that continuum could be the least restrictive environment, but that is not the way the Department of Education is interpreting it. They are saying the least restrictive environment is the regular classroom and that everything else is more restrictive.

We are saying you shouldn't look at it that way. What are the needs of the child? Whatever the needs of the child are then determine from that range what is the appropriate education and, therefore, the least restrictive environment for that child.

Mr. **Bartlett**. In your opinion, does that require a change of the legislative authority or merely a change of regulations?

Mr. **Klopping**. I think it just requires a change of regulations and clarifications from the Department of Education. The water is very muddy across this country, and the Department of Education is to blame for that muddy water.

Mr. **Bartlett**. Is there a role for Congress in that? You are suggesting that there is no additional legislative authority within Public Law 94-142 to make that change?.

Changes in Public Law 94-142 regulations by the Department of Education have not been made without controversy and, in fact, have not been made at all because of the enormous emotion attached to any change so much as a semicolon, so I guess I am quizzing you as to how that should be accomplished. Would you propose the Secretary simply change the regulations and publish them?

Mr. **Klopping**. Well, we would hope that the interpretation of the regulations would be such that they would be more clear for the country to understand. If it becomes necessary for Congress to intervene with legislation, then that might be something down the road, but right now, we feel that if we could get the Department of Education to clarify, to clear up, and to interpret what Congress has developed in Public Law 94-142, it would be very helpful in seeing that deaf children in this country receive an appropriate education.

Mr. **Owens**. Would the gentleman yield for a moment?

Mr. **Bartlett**. I would be happy to yield.

Mr. **Owens**. Did you say that, in reply to the question, there was an agreement among the members of the Commission? There was agreement among the members of the Commission?

Mr. **Klopping**. Oh, yes. The Commission is unanimous in its recommendations relative to LRE.

Mr. **Owens**. Good. I just wanted to make sure that is on the record.

Mr. **Klopping**. Yes.

Mr. **Bowe**. Mr. Chairman, may I add briefly that the world does not begin and end at the Potomac River. Many of the problems that we found are problems of interpretation by the schools and parents around the country. There is tremendous misunderstanding of what the law actually requires. We found that tremendous misunderstanding to be a very significant part of the problem.

Fundamentally, we pointed back to the law and tried to clarify what it meant. We do not believe it needs substantial revision with the one exception that I pointed out, the authority to encourage excellence in quality I believe will probably require new legislation.

Mr. **Bartlett**. Mr. Chairman, I have a number of additional questions, so as we get towards the time, if you will indicate it.

My next question is on an area that was mentioned in passing several times but may go to the core, at least of one of the results of education of adults, and that is in the area of employment. In your opinion, either based on the commission's findings scattered throughout or other knowledge of each of the three panelists, what are the greatest barriers today to employment for persons with hearing impairments?

Mr. **Bowe**. I would say number one, very simply, the fact that our rights are not coextensive with those of women and minority groups. As a deaf person, if I were to apply to get a job in the private sector, my rights would be protected by a few companies that have contracts with the Federal Government.

Until recently, our rights in the public sector were limited by the interpretation under Grove City to just a few programs.

Mr. **Bartlett**. So, number one is discrimination.

Mr. **Bowe**. Yes, sir.

Mr. **Bartlett**. Okay, number two?

Mr. **Bowe**. Number two is the technology I was talking about. If we can find some way to put—for example, take me. I may have certain skills and talents. I acknowledge that they are well hidden, but there are a few of them. If you give me technology that helps me to surmount my limitation, those talents can bloom and blossom.

With the technology that is there, it is so tantalizing I can almost taste it, but this country has not found a way to get it in my hands to do my work. I would say that is number two.

Maybe number three, very simply, is one of the problems that was brought to the nation's attention during the Gallaudet demonstration. We as people who are deaf are so misunderstood and unknown. People do not understand our needs or care, and their attitude towards us is not as encouraging as it might be.

I think my colleagues would probably have some more observations on that, but I would think discrimination is number one, the lack of some mechanism to help us to surmount our disability through readily available and affordable technology, and, third, continuing misunderstanding and lack of comprehension and support among the general public.

Mr. GAINER. Well, I think I would want to get on that list the fact that for a large number of deaf people, the public school systems and the Federal Government have not provided the communication skills necessary to function in the labor market. Even if you were to erase the barriers that Frank mentioned which are profound, an awful lot of deaf adults would still not have the literacy skills required by modern society.

During the course of this commission, I have met a large number of very accomplished and brilliant deaf people who have leadership skills and have the capability to write very well and to function in any environment with minimal support, but they wouldn't be there if it weren't for the quality of the education that they have, and their education is really exceptional among deaf people. The average high school graduate has a third grade reading level among the deaf.

So, the people who are in this room for this hearing today who are deaf are among the superstars of this population, and if you don't do something for those lower functioning deaf adults, they are never going to be fully integrated into this society, and I think that is a very important factor.

Mr. BARTLETT. So, you would add literacy way up at the top of the list.

Mr. GAINER. Yes.

Mr. BARTLETT. Mr. Bowe, you had mentioned earlier, and I just want to make sure that I am not missing something, on the SSI, the extension of section 1619. Were you suggesting that something more needs to be done or we did the wrong thing? You did mention the motivation versus security issue, and I am trying to—we all look for continued ways to unlock that lock.

Mr. BOWE. Mr. Bartlett, I was reporting to you extensive testimony that we heard. I think that my colleague on my left can speak to it from personal experience, Dr. Klopping of California.

What we heard is very basically simple. If you have a child or young person 14, 15, or 16 years old who is deaf, and the Social Security Administration and the State determine that he is eligible for SSI, you suddenly have the child and the family receiving checks every month from the government, not because the kid is working and contributing to society but because the kid is deaf. The message is a very clear message: you are entitled to support from your government because you are deaf.

The parents told us and teachers, school superintendents, and principals that you watch young people to whom $300 a month is a massive fortune, and you see them saying why am I studying, why am I working, why would I bother. And the families are saying we don't want to take a chance on losing that money. If our child goes to work, he may lose a job, and we would lose these checks from the government. So, the family is not that interested in the child succeeding.

Now, this is second hand information we have received, but I think Dr. Klopping experienced it first hand. I would like to see if he can add a comment in response to your question.

Mr. KLOPPING. I would only add, Congressman, that SSI is absolutely necessary, but I think we need to take a look at how it serves as a disincentive to high school-aged deaf children who should be in a work-study program. We have examples where we have children that we have gotten ready to go out and have work experience and earn money, and the parents object to our having them do that, because if they do it, they are going to get their SSI cut off.

So, it is a disincentive for children and for parents sometimes to make the hard decision that they are going to have the child go ahead and get his SSI cut off and yet get that work experience which is absolutely necessary if they are going to make it. It is the disincentive that has to be looked at. Somehow there has to be a way not to make it a disincentive for children to have work experience so they can go out into the labor market.

Mr. **Bartlett**. Dr. Klopping, the Commission was courageous in all of your recommendations except that one in which you omitted to make a recommendation as to what radical thing we might do to address that. You are suggesting, of course, revolution, and I want to explore with you what we should accomplish.

You are absolutely correct. It is not just second hand information. Every deaf person and parent in America knows of this enormous disincentive. 1619 and the ability to continue Medicaid, it seems to me, does have some positive impact on that, but you are suggesting it goes deeper than that and that it also goes to the loss of the monthly cash benefit.

So, what should we do?

Mr. **Klopping**. Well the Commission felt that this issue of SSI was so broad and so extensive that if we tried to study that issue alone, we could have forgotten the rest of our report. So, we chose not to focus on the SSI issue. However, we do mention it in our report because we feel that Congress needs to take a look at this and it needs to be studied in more depth.

We do not make recommendations relative to that, however, other than to say it needs to be studied.

Mr. **Bartlett**. Mr. Chairman, I want to ask one additional question on post-secondary, and I just want to see if I am reading the report correctly, but guide me in what I should reach as far as conclusions.

The report on post-secondary seemed to emphasize exclusively the hearing impaired schools, the special schools of Gallaudet, NTID, and the regional resource centers. Can you give us a snapshot of what you learned about the access of the whole array of other post-secondary education to deaf students? Is it accessible at this point? If not, should it be? What is the status?

Mr. **Gainer**. We did, in fact, have a number of witnesses and some studies available to us regarding those 504 programs as we have referred to them. It turns out that most of those programs, particularly those that have a limited number of students, just do not provide adequate support services.

Under the law, they are supposed to, but it is expensive to provide support services. We debated greatly as to what we ought to recommend about those 504 programs, whether we should recommend tougher enforcement or just what we should do.

However, we also heard a great deal of testimony about what we refer to in our report and in the testimony as critical mass. Most of the programs under 504 do not have that critical mass. We don't know when it occurs, but it is probably around 50 students where you can provide good support services, where you have some opportunity for students to communicate with one another, to have a social life with other deaf students as well as hearing students.

Mr. **Bartlett**. So, 50 students on campus you concluded was the critical mass.

Mr. **Gainer**. We never really broke down the number, but it is probably someplace there, because if you look at the post-secondary programs that are there now, three out of five had less than 20 students, and none of those programs provided what we felt were adequate support services. So, it is well above that, and you are only going to be left with a handful of programs beyond the federally supported ones that appeared to have adequate support services.

Mr. **Bartlett**. How many colleges and universities in the country has a whole have, (a) a critical mass and (b) adequate support services?

Mr. **Gainer**. I don't have that number in front of me, but it wouldn't be more than 20 probably, including the federally subsidized programs.

Mr. **Bartlett**. Mr. Chairman, I have one additional very brief and technical question, because there is a good deal of mail that is sent both to Congress and to the Department about a rather technical issue.

Mr. Bowe, you spoke of quality of early childhood intervention, and I agree with you. That becomes the next step now that we have essentially established a Federal program in terms of early childhood.

Many of the States are way ahead of us, and the next step is to really begin to build on that quality of early childhood. My question is, there seems to be a controversy which may only be a controversy in limited circles, but I want your recommendation on it. There seems to be a controversy as to whether quality means that we should require under the qualified personnel section of the Federal law whether that means a master's degree or something different.

What would you do with that issue as far as the definition of personnel in an early childhood intervention program?

Mr. **Bowe**. My colleague is better qualified to answer that question than I am. I will have a comment but not as good as his.

Mr. **Klopping**. Of grave concern to us is the fact, particularly with the new Federal support now for infant and preschool education, that many of the professionals who are now working with hearing impaired youngsters are not trained, certified individuals to work with those youngsters. We see a very generic approach to working with these youngsters, and we feel that if parents and deaf children are to receive appropriate instruction—parents on how to deal with their children and children in terms of the instructional aspect— that you need to have people working with them who are prepared professionally to work with them.

I see a great disservice being done to many very young deaf children with the generic approach. We need to have people who are professionally prepared. They need an early childhood education background, but they also need background in the area of working with hearing impaired children.

So, that is how I would respond.

Mr. **Bartlett**. Does that require a master's degree in your opinion?

Mr. **Klopping**. It would not require a master's degree, no, but it would require professional course work that would permit them to have the knowledge necessary.

Mr. **Bartlett**. Thank you, Mr. Chairman. I appreciate the additional time.

Mr. **Owens**. Thank you very much, members of the panel. I wish we had more time, but you may submit any additional recommendations or comments you have to us within the next 10 days to be included in the record of this hearing, and we may submit to you some additional questions that we would like to have answered.

Thank you again very much.

Mr. **Bowe**. We will be delighted to answer any questions, and I do want to thank both of you as people I have known who have worked for many years as leaders who have fought for our rights and have made significant contributions. I want to thank you. It has been an honor to be with you.

Mr. **Owens**. Thank you, again.

For our next panel, we are pleased to welcome Mr. Victor Galloway, California State University at Northridge; Mr. Bill Castle, Director of the National Technical Institute for the Deaf; Mr. I. King Jordan, President of Gallaudet University; and Mr. Greg Hlibok, President of the Student Government at Gallaudet University.

Mr. Galloway, we will begin with you.

STATEMENT OF VICTOR GALLOWAY, CALIFORNIA STATE UNIVERSITY AT NORTHRIDGE

Mr. **Galloway**. Thank you, Mr. Chairman.

I appreciate very much the opportunity to make comments on certain items in the final report of the Commission. I will focus on the recommendations contained in chapter 3 which pertain to post-secondary education programs for the deaf.

I have been with the California State University at Northridge for almost two years now, and I have seen some problems that the Commission has identified on different occasions. Four of us—Seattle County Community College, St. Paul Technical Institute in Minnesota, the University of Tennessee Consortium—we all support the recommendations made by the Commission where the post-secondary programs are concerned. We support the recommendation that additional funding be given to the four programs so they can become more comprehensive.

In my previous position as the Superintendent of the Scranton State School for the Deaf in Pennsylvania and the Executive Director of the Texas School for the Deaf in Austin, I was pleased to see a large number of students go on to appropriate post-secondary education. However, I watched with dismay and a sense of hopelessness when a large number of students moved out of our programs because of the age limitation on eligibility for services, and they moved on into society with no skills, and we were not able to find programs that could continue to provide comprehensive services.

This is a real problem. The National Technical Institute for the Deaf has taken steps to create a consortium which will include the four REPS as well as Gallaudet and NTID so that we all can provide comprehensive services to all types of deaf individuals.

Right now, for example, CSUN provides only four years of programming. I support the recommendation of the Commission that the regional program become more comprehensive and start working with other post-secondary programs in our respective regions. This way, a larger number of deaf individuals will be served.

It is recommended by the Commission that the competitive funding cycle be increased from the present three to five. This is very important to us, because we have experience with on-going turnover of qualified personnel and the uncertainty on the part of the students for continuing services during their matriculation.

If we could increase the cycle to five years, we would be able to retain highly qualified personnel.

Another significant recommendation from the Commission has to do with adult and continuing education programs. I was with California State University 22 years ago before I moved on to other jobs here in the East. We started a large adult education program in Los Angeles and Orange Counties.

It proved to be very popular, but, because the university lost the funding, they lost the leadership, the positions that were held by deaf people to run the program and to continue to have contact with the various adult schools in those two counties. All of the programs started to disappear.

I am pleased that the Commission sees a need for such programs, and we all support this recommendation.

They have also recommended very strongly that all of the four programs be evaluated annually. We would welcome this type of evaluation and oversight.

However, I would go one step further, and I would recommend strongly that no evaluation be done without a site visit. I would recommend that at least one site visit be done of all of the four regional educational programs.

It is obvious that I have been concerned primarily with the post-secondary education issue, but there are other recommendations that are equally as important. We have a large number of interpreters serving in the regular classrooms, and I support the recommendation that calls for the Department of Education to develop guidelines to establish standards for educational interpreters.

I was very fortunate that I had the services of qualified interpreters when I worked on my master's at CSUN and my doctorate at the University of Arizona. I would never have been able to go through these two programs without this kind of support, and the number of programs has grown tremendously since the passage of Public Law 94-142, and we need to develop standards for interpreters in the various elementary and secondary programs as well as post-secondary programs.

Mr. Chairman, you asked this question of the previous panel. You asked if you had to select just one recommendation, what would that be?

I was pleased to hear Dr. Bowe identify that the top priority should be given to language acquisition. I feel very strongly that if all deaf children can be helped acquiring language at the same level as their hearing peers, many of the problems that the Commission has identified would be greatly diminished if not completely removed.

I appreciate very much the opportunity to make those statements, and I would be happy to answer any questions.

[The prepared statement of Victor H. Galloway follows:]

TESTIMONY PRESENTED TO THE
UNITED STATES HOUSE OF REPRESENTATIVES
EDUCATION AND LABOR SUBCOMMITTEE ON SELECT EDUCATION
MARCH 30, 1988

by

Victor H. Galloway, Director
National Center on Deafness
California State University, Northridge

and also representing

Ron LaFayette, Seattle County Community College
Robert R. Lauritsen, St. Paul Technical Institute
William Woodrick, The University of Tennessee

Mr. Chairman, I have had the opportunity to carefully review the final report of the Commission on Education of the Deaf, Toward Equality: Education of the Deaf. This important report represents the best thinking on several aspects of deafness and primarily on education of the deaf so I am very appreciative of the opportunity to make a statement before this Committee on a number of items in this report.

The Commission is to be commended on its success in bringing together individuals representing a variety of philosophies on education of the deaf and working together to reach a consensus on a large number of recommendations for the common good. The staff at the National Center on Deafness and at the three other federally funded postsecondary education programs have been involved in providing input, data and views on several occasions so I am very satisfied that the Commission made every effort to involve every possible constituency in an open and fair process to develop its final report.

The four Postsecondary Education Programs for Deaf students have been operational since 1975 with the passage of Section 625 of the Education of the Handicapped Act (Copy of Section 625 attached). The programs have collectively served over 6,000 deaf students from every state, the District of Columbia and several of the Territories. The programs have consistently more than doubled the dollars available annually from the Federal Government through other Federal grant programs, State funds and from the private sector. We have cooperated with the National Technical Institute for the Deaf and Gallaudet University on numerous occasions and have participated in GAO studies.

While I support virtually all of the recommendations made by the Commission most of my remarks will be limited to those items pertaining to postsecondary education (Chapter 3).

The Commission has recommended that each regional postsecondary educational program be strengthened with increased funding so that it can provide a broader range of educational options, including vocational and technical training, two-year junior college, and baccalaureate programs (Chapter 3, Recommendation 17). I strongly support this recommendation and the directors of the programs in Seattle, St. Paul and Knoxville have also indicated their enthusiastic endorsement of this recommendation. The report shows that there are 32 postsecondary programs serving deaf persons in the state of California alone and most are in the southern part. If this recommendation is implemented it will be possible to develop a very comprehensive postsecondary education program serving a wide range of deaf and hard of hearing persons and because a "critical mass" can very easily be attained in Southern California the program will be very cost-effective.

The National Technical Institute for the Deaf has taken the first step to create a Consortium of Postsecondary Programs for the Deaf which would include the four regional programs as well as NTID and Gallaudet University. Such a consortium would be the most effective vehicle to implement Recommendations 17, 19 and 20. The American Deafness and Rehabilitation Association, the Council of State Administrators of Vocational Administration, and the National Association of State Directors of Special Education will be participating partners in this consortium.

The directors of the four regional programs have already gone on record supporting the Commission recommendation that a fifth Regional Postsecondary Education Program for the Deaf be established in the southwest region of the United States.

It is also recommended that the competitive funding cycle for the regional postsecondary education programs for the deaf be increased from the present three years to five (Recommendation 18). This is crucial if we are to improve the stability of the programs through decreased turnover of qualified personnel and the elimination of insecurity on the part of the deaf students who need assurances of continued support services during their matriculation.

Yet another significant recommendation (19) has to do with the provision of adult and continuing education programs. I was pleased to note that the Commission saw fit to quote me in the report on this topic. In the mid-sixties CSUN was the first postsecondary program to mount strong adult education programs for deaf persons not only at its campus but also at various schools in Los Angeles and Orange counties. Unfortunately, lack of funding led to the demise of the programs after only four years. The Commission has recommended that funds be authorized by Congress for each regional postsecondary education program for the deaf to provide adult and continuing education programs within its respective region and to assist other local educational institutions in providing such programs to adults who are deaf. There is a great need for such programs nationwide so this recommendation should be implemented.

Recommendations Nos. 21 and 22 in Chapter 3 would provide for comprehensive evaluation and oversight of federally supported postsecondary education. We would welcome the opportunity to have our programs undergo evaluation and oversight. I would, however, urge that this recommendation be strengthened to require at least one site visit per year. Based on my personal experience in program evaluation, no such evaluation or oversight should be completed without a site visit.

There are a number of other recommendations which do not necessarily pertain to postsecondary programs but certainly have important implications for them. If we are to continue to provide quality education in a mainstreamed setting such as CSUN we must have qualified support services personnel. I was pleased that the Commission has recommended that the Department of Education provide guidelines for states to include in their state plans such policies and procedures for the establishment and maintenance of standards to ensure that interpreters in educational settings are adequately prepared, trained, and evaluated. I was extremely fortunate to have had the support of excellent interpreters when I was working on my master's degree at CSUN and doctorate at the University of Arizona in the mid- to late sixties. With the proliferation of educational programs for the deaf at all levels it is crucial that standards be established for educational interpreters.

Finally, while I am obviously concerned that special attention be given to strengthening the various postsecondary programs including NTID and Gallaudet University, if I were asked which single recommendation of all 52 listed in the report is the most important I would choose the one on language acquisition (Recommendation No. 3, Chapter 2). For too long we have tolerated the pervasive poor reading ability of deaf individuals when there should be a sense of national outrage that this situation has been permitted to continue. Mr. Chairman, I would hope that this Committee will support most, if not all, 52 recommendations; however, I pray that top priority will be given to Recommendation No. 2.

Thank you.

Mr. OWENS. Thank you.

Mr. Castle?

STATEMENT OF WILLIAM CASTLE, DIRECTOR, NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

Mr. CASTLE. I would first of all like to thank you, Mr. Chairman and Mr. Bartlett, as well, for inviting me to come to this hearing and thank you in addition to that for your years of support to the National Technical Institute for the Deaf and, finally, to thank you for taking the initiative along with the Subcommittee on the Handicapped in the Senate to lead the way for the passage of the Education of the Deaf Act of 1986 which did establish the Commission which has reported to you today.

I would also like to indicate my highest respect for what the Commission has accomplished. They have worked very diligently, and as we were called forth to be witnesses before that Commission, we were all dealt with in the most cordial way. I believe they have produced what I would call a landmark document with respect to education of the deaf.

As you know, it contains 52 recommendations. It is easy for us at the National Technical Institute for the Deaf to support most of those recommendations. Others we would support with some qualification, and there are maybe one or two that we would disagree with.

However, as we look at those that stand out for support, it is quite clear to me that we must stand strongly behind the recommendation regarding early identification and the additional one for early intervention. These two things have long been in need of strengthening.

You have taken the initiative on both matters, but they still need to be strengthened further.

I also believe it is important to point out that the interpretation of Public Law 94-142 does need to allow for choice of options among parents of young deaf children particularly. I also stand strongly behind the recommendation for the Special National Institute on Deafness and other Communication Disorders.

I have full appreciation for the rationale given for the establishment of ten regional comprehensive centers regarding the deaf, and I certainly do agree with the need to strengthen and broaden the efforts of the existing federally sponsored post-secondary programs that are regional in nature.

I would like to point out, as Victor Galloway has pointed out, that some initiative has already been taken for the establishment of what we call a post-secondary consortium which may very well prove to be an initial, very strong, partial response to all of these recommendations regarding the comprehensive centers and the strengthening of post-secondary programs. I would be happy to discuss that consortium concept in more detail if you choose to have me do so.

Regarding NTID per se and the recommendations that have come forth from the Commission, I would simply first say we appreciate the concept of the liaison office in the Department of Education. As a matter of fact, NTID for its full 20 years of operation has always had a project officer. Currently, it is Madeleine Will, and we have also had a liaison officer throughout those 20 years.

We appreciate the recommendation for a five-year or some regular timing of evaluation of our program. We would hope, however, that if this is to be done by the Department of Education, they would end up doing it in conjunction with accrediting agencies that already exist and who do come in on a regular basis to do evaluations of their own kind.

We stand strongly behind the recommendation regarding affirmative action, not just with respect to minorities, but in terms of adding to our staff in terms of the numbers of hearing impaired people who are working with us.

With respect to the recommendation about a majority of members on the National Advisory Group having to be deaf, we respect the principle of that suggestion. However, we would like to suggest that since the consumerism aspect is what is important here, we would suggest that a part of that majority might very well also be parents of deaf children or children of deaf parents.

We appreciate the recommendation that has been made by the Commission in final analysis regarding research at NTID, and that is to suggest the current mode of funding for research at NTID should stay in place.

The one issue that I would like to dwell on just briefly is the matter of the foreign student question. We appreciate the recommendation of the Commission that we should be allowed to admit foreign students to NTID. We have always contended that we would like that on a parity with Gallaudet University.

We do not agree with the 10 percent limit that is suggested, however. We do not see why it is important to set such a limit. If we have capacity to accommodate 1250 deaf students, why should we hold to 1210 if the number of U.S. citizens is only 1100?

We also do not agree with the 75 percent of full costs of the average per student cost. We think if the issue here is subsidization, that would in effect be tantamount to asking the foreign students to subsidize the U.S. citizens in our program.

If the Commission report could be strengthened in any way, I think there should be a stronger recommendation there with respect to the kinds of qualifications that teachers of the deaf should have. You asked the question about what is important for raising quality.

My personal opinion is very strong that individuals who teach at the preschool level or the elementary level or at the secondary level young children who are deaf should first be well qualified teachers of preschool children, well qualified teachers of elementary children, and well qualified teachers of secondary children, and then add to that the added specialty of teaching deaf children at all of those levels.

I also would suggest the report could be strengthened if it had made a recommendation for wider and broader use of such specialists with deaf children as audiologists, speech pathologists, school psychologists, and, especially, language specialists who are fully qualified in language instruction per se.

This concludes my testimony for today. Thank you.

[The prepared statement of William E. Castle follows:]

TESTIMONY PRESENTED TO THE SUBCOMMITTEE ON SELECT EDUCATION

BY

WILLIAM E. CASTLE

VICE PRESIDENT FOR GOVERNMENT RELATIONS, RIT

DIRECTOR, NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

WEDNESDAY, MARCH 30, 1988

Mr. Chairman, Members of the Committee.

I am pleased to have this opportunity to testify before this subcommittee on the subject of the Commission on Education of the Deaf report, Toward Equality: Education of the Deaf, and its recommendations.

We at the National Technical Institute for the Deaf (NTID) have experienced a sense of common purpose and a cordial working relationship with the Commission over the past 15 months. While we are not in full agreement with every recommendation of the Commission, we strongly support most. Furthermore, we are satisfied with the opportunities given us to present our positions and background information on issues where there has been disagreement. I would like to add that the Commission and its chairman are to be commended for bringing together such an outstanding support staff.

This report has the potential to become a landmark document for the education of the nation's deaf children and adults in both the near and the distant futures. I am reminded that a Congressionally established Advisory Committee on Education of the Deaf, similar in many ways to the present Commission, was put in place nearly 25 years ago. Many subsequent developments in the education of deaf children and adults can be traced to that Advisory Committee's report (often cited as the Babbidge Committee Report), one of which was the establishment of the National Technical Institute for the Deaf. Therefore, as the Director of NTID, I have a full appreciation for the potential impact of the report you have before you.

The Commission on Education of the Deaf has presented Congress with 52 recommendations. I support most of these recommendations unequivocably, I support some with qualifications, and I disagree with a few of them. In a moment I would like to comment on some of the Commission's recommendations, focusing but not restricting my attention to those pertaining to postsecondary education.

In preparing this testimony, I reviewed the statement I made in May, 1986, as a witness before the house Subcommittee on Select Education with regard to provisions in "The Education of the Deaf Act" which called for the creation of a Commission on Education of the Deaf. With the Committee's indulgence I would like to pick up on some elements of that statement in relation to the findings and recommendations of the Commission report.

I spoke at that time of the need within this country to put in place a universal system for the early detection of deafness in infants. I am pleased that the Commission is recommending that the Department of Education, in collaboration with the Department of Health and Human Services, issue federal guidelines to assist states in implementing procedures for screening all live births, and in following up with those infants and young children considered to be at risk for hearing impairments (Recommendation 2).

I spoke also of the need to establish parent/infant and early education programs universally throughout the nation for hearing-impaired infants and young children, and for their parents. The Commission has recognized the importance of early intervention services for young deaf children and their families and is recommending that in their statewide planning and implementation activities, state educational agencies be required to include the development of program and personnel standards that address the educational and psychological needs of families with young deaf children (Recommendation 29). Another recommendation urges that grants be targeted for training personnel to provide early intervention and preschool services to deaf children from birth through five years and to their families (Recommendation 31). Both of these recommendations should be implemented.

Within the context of P.L. 94-142, I expressed concern about the frequent misapplication of the concept of "least restrictive environment" in equating it with "mainstreaming," and stated the belief that "this interpretation leads to an overly frequent phenomenon of restricting freedom of choice among programs that are available to deaf children and youth and their parents." The Commission has submitted six forceful recommendations (Recommendations 5-10) to redress abuses stemming from such an interpretation, and has added recommendations pertaining to the determination of the appropriate educational program for each deaf child as an individual (4), parent's rights (11), evaluation and assessment (12), program standards (13), and quality education (14). I urge congressional support for the implementation of these 11 recommendations in order to strengthen the progressive intent of P.L. 94-142 for deaf students.

The Commission endorses your Subcommittee's recommendations for the establishment of a National Institute on Deafness and Other Communication Disorders within the National Institute of Health. I concur with this endorsement (Recommendation 1).

The Commission is recommending the establishment of comprehensive service centers for deaf rehabilitation clients (Recommendation 20). Such centers have been discussed and debated, sometimes under federal auspices, for 30 years or more, and several centers have received temporary and sometimes token federal funding to initiate limited types of services. Major federal support for the establishment of such centers on a regional basis is long overdue. I am inclined to suggest a more modest initial number than the ten recommended, and the establishment of at least one as a model with a mandate for applied research, demonstration, and professional training. Regardless of the level of federal support that is feasible at the outset, the federal commitment should be strong and enduring.

I strongly support the recommendation that each of the four regional postsecondary programs currently serving deaf students be strengthened and expanded in their range of offerings. I also concur with the ancillary part of the same recommendation which urges the establishment of a fifth such program in the southwest region of the U.S. (Recommendation 17). I support the recommendation that these programs be encouraged and appropriately funded to provide exemplary adult and continuing education programs for deaf persons within their respective regions, and to assist other local educational institutions in providing such services to deaf adults also (Recommendation 19).

We at NTID believe that we have designed a first and modest response to the Commission's recommendations 17, 19, and 20 by taking the initiative to organize what we are calling the "Postsecondary Consortium." This

Consortium has a nine-person steering committee with six "bona fide" members and three "ex officio" members. The six "bona fide" members are the directors of the six federally stipulated postsecondary programs for the deaf (Gallaudet University, NTID, St. Paul Technical Institute, Seattle Central Community College, California State University-Northridge, and University of Tennessee); the three "ex officio" members represent the American Deafness and Rehabilitation Association (ADARA), the Council of State Administrators of Vocational Rehabilitation (CSAVR), and the National Association of State Directors of Special Education (NASDSE). The chief goal of the Consortium, once in operation, is to deal with the special needs of postsecondary deaf adults, especially low achieving deaf persons, who are not currently receiving attention from existing postsecondary programs for the deaf. A very important interest with respect to low achieving deaf persons will be the raising of literacy levels.

My remaining comments on the recommendations concerning postsecondary education pertain to NTID itself.

NTID is comfortable with the recommendation that a liaison office within the Department of Education (i) have a role in the coordination of activities across the national and regional programs, including NTID, to ensure quality and avoid unnecessary duplication, (ii) review and comment on workplans relating to certain activities, and (iii) assist in the development of budget requests (Recommendation 21). NTID has always had a project officer within the Department of Education and this recommendation does not represent a major departure for us.

NTID is also satisfied with the recommendation calling for program evaluations of the national and regional postsecondary programs, including NTID, on a five-year cycle (Recommendation 22). We do suggest that such evaluations be timed to coincide and be conducted in conjunction with the cyclical accreditation process at Rochester Institute of Technology, NTID's host institution. It may be possible to adjust the reauthorization schedule or to prevail on the accrediting bodies to adjust theirs. The result could be a comprehensive, credible, and timely evaluation which is appropriate for both Congress and the accrediting bodies.

NTID remains strongly committed to its affirmative action program, and we will continue to be assertive in recruiting, hiring, and promoting applicants and employees who are deaf. We fully subscribe to the recommendation pertaining to this topic (Recommendation 25). Our record over the past two years in doubling the number of staff who are members of minorities and increasing the number of hearing-impaired staff by 20 percent speaks well to our sincerity and commitment to the principle of affirmative action.

The Commission is recommending that a majority of members of the governing and advisory bodies of the national and regional postsecondary programs be persons who are deaf (Recommendation 26). I am sympathetic to the intent of the recommendation but believe that parents of deaf children and children of deaf parents should also be part of that majority. NTID has pointed out to the Commission that in 1987, almost one-half of NTID's active National Advisory Group, including the federal liaison officer, consisted of hearing-impaired persons (6), parents of deaf children (2), or children of deaf parents (1). The remaining members include educators of the deaf, members of Congress, and leaders in business and industry as prescribed by current law. As the director of NTID, I look to all these sources for advice and counsel, but parents of deaf children and children of deaf parents add a special kind of sensitivity and insight which is difficult to capture from other sources. I would be more supportive of the Commission's Recommendation 26 if a provision is added for parents of deaf children and children of deaf parents, namely that the collective majority of NTID's National Advisory Group consist of persons who are hearing impaired, to number no fewer than one-third, parents of deaf children, and children of deaf parents.

As part of one of its recommendations, the Commission urges that foreign deaf students become admissible to NTID (Recommendation 23). Implicit in this recommendation is the principle that no qualified student in this country would be replaced by a foreign student. NTID strongly concurs. We believe the enrollment of foreign deaf students can be both educationally beneficial and economically justifiable for all, and have shared considerable corroborative documentation to this effect with the Commission. A second part of the same recommendation limits the number of foreign deaf students to 10 percent of the student body. We at NTID consider this to be an unnecessary restriction since our enrollment capacity for deaf students stands at 1,250. For example, to suggest that we should hold at 1,210 total if the number of U.S. students is only 1,100 seems overly restrictive. A third part of the recommendation pertaining to the admission of foreign deaf students concerns tuition charges. The Commission is opposed to any federal subsidization of foreign students. We have had considerable dialogue with the Commission on charges to students, arguing that the marginal (incremental) costs for foreign students would be considerably lower than suggested by the formula recommended by the Commission. The Commission has not been dissuaded in its view. If we use the tuition rate suggested by the Commission, we will realize a profit of nearly $10,000 per foreign deaf student for each year he or she is enrolled. We understand the concern about foreign students being subsidized by federal dollars, but by the same token we do not believe there should be federal profit from educating foreign deaf students in this country. We have demonstrated that we can serve the additional students who are deaf because of the rubella epidemic of the early '60's at a cost of approximately $8,000 per year, and we see no reason why we cannot do the same with foreign students.

Whatever the tuition charge level chosen by Congress for foreign deaf students, we continue to endorse the policy of parity between NTID and Gallaudet University in our tuition charges. Our two federal programs have a legal agreement, based on sound educational policy, to charge equivalent tuitions to our respective students in order to discourage enrollment decisions based solely on relative tuition costs. In summary, I support the recommendation that foreign students be admissible to NTID, but argue vigorously for parity in the tuitions charged these students by the two federal postsecondary programs.

I am pleased to say that after testimony was presented and supplementary documentation was furnished to the Commission, it withdrew an earlier draft recommendation to reduce the base level of federal funding for research at NTID. I quote from the Commission report as follows:

> "We subsequently concluded that this (current) level of research at NTID was appropriate and that our recommendation should not result in a change in this level of research funding at NTID (Discussion preceding Recommendation 27)."

The Commission is also recommending that Gallaudet University and NTID be directed to make their research plans more open to public comment by consumers and researchers, and to incorporate outside authorities into the review process (Recommendation 28). We endorse this recommendation and, in fact, have just developed a policy and the procedures for implementation of a process for external review of research at NTID at various points in its development and reporting.

There are two matters that I wish to bring to your attention which would serve to strengthen the Commission's report and to strengthen the field of education of the deaf in the future. The first has to do with certification standards for teachers of the deaf. The Commission recommends guidelines for universal standards that are at least as stringent as those set by the Council on Education of the Deaf (Recommendation 32). We need to go farther than this recommendation suggests. Teachers of the deaf at the pre-school, elementary, and secondary levels should be qualified not only to teach deaf students but should have the same qualifications to teach at these respective levels and within specific areas as their colleagues who teach hearing children. In many instances this may call for dual certification. For example, it should not be enough for a teacher of the deaf to be certified at the secondary level. That teacher should also be certified in particular content areas.

The second matter pertains to all the special services that are required for deaf children within the educational process. The Commission makes no point of the need for a greater prevalence of audiologists, speech pathologists, language specialists, school psychologists, and personal and career guidance counselors in all educational programs for deaf persons; and it should, because all such professionals are important to the interest in making things different.

Lastly, I wish to comment on prioritization of the Commission's 52 recommendations. If Congress finds it necessary to pick and choose in terms of what it can and should support, I would hope that it would do so on the basis of which the recommendations are designed to enhance the chances of successful educational accomplishment for deaf children of the future. To illustrate, it is far more important to universalize early identification and early intervention programs than it is to provide all deaf persons with free decoders for captioned television; it is far more important to do everything possible to improve what is happening at the preschool, elementary, and secondary levels of education of deaf persons than it is to establish a federal bureaucracy to perpetually evaluate postsecondary programs; and it is far more important to reduce the number of low achievers in the future than it is to improve the lot of today's low achieving deaf persons.

In closing, I wish to express my appreciation for being invited to testify before this subcommittee on the Commission's very important report. I'm sure that members of the Committee will respond to this report in many ways that will improve the educational circumstances for this nation's deaf population.

Castle,W.-312a##
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Mr. **Owens**. Thank you, Mr. Castle.

President Jordan?

STATEMENT OF I. KING JORDAN, PRESIDENT, GALLAUDET UNIVERSITY

Mr. **Jordan**. Mr. Chairman, Mr. Bartlett, I appreciate the opportunity to appear before this subcommittee and to comment on the report of the Commission on the Education of the Deaf.

I am pleased to be joined today by the Chair of the Board of Trustees, Mr. Phil Bravin, and by the President of our Student Body Government, Greg Hlibok. Also here today are a number of students, faculty, and staff from Gallaudet.

The 240 Gallaudet students from States represented by membership on this subcommittee send special greetings along with the rest of the members of our Gallaudet community.

Gallaudet is now entering a new era. Our campus community is energized and has a sense of renewed commitment to our unique mission as a distinguished special university. The events of the past few weeks have brought a heightened sensitivity with respect to the role of deaf people to Gallaudet University and the society as a whole.

Our Board of Trustees has already acted on the Commission recommendation to increase representation of deaf persons among its membership. As our review and response to the Commission report continues, I want to assure this subcommittee that we shall utilize this new energy to bring a fresh perspective to the issues facing Gallaudet University.

We have appreciated the opportunity to work with the Commission on the Education of the Deaf in examining a number of important issues relevant both to post-secondary education and to the field in general. The 18-month effort by the Commission provided a forum for numerous individuals and groups to share their concerns about the status and future of education of deaf people.

I would ask the subcommittee to please consider my brief tenure as President of Gallaudet University and to afford me the opportunity to work with my administration in setting an agenda for Gallaudet prior to any legislative action which might be contemplated as a result of the Commission report.

The Commission addressed in a very substantive way the issue of least restrictive environment and has made positive recommendations with regard to the manner in which this concept should be viewed as it relates to deaf persons. Utilizing the concept of most appropriate as opposed to least restrictive places the interpretation in a much more positive light and will, we believe, significantly improve the decision making process with respect to placement and programming.

Similarly, the Commission has recognized the significance of ensuring the availability of an adequate number of highly trained professional personnel to serve the educational needs of deaf people. Each of the 11 recommendations of the Commission within this general area is appropriately made and substantiated.

Examples of other well chosen and developed recommendations made by the Commission are those related to the area of educational technology, for it is this field which already has provided important breakthroughs on behalf of deaf persons and continues to hold promise for other significant advances in the future.

Within the areas just mentioned and most other portions of the Commission report, recommendations focus on the improvement of the quality of programming and the expansion of services to deaf persons. We find these recommendations, in general, to be very helpful.

On the other hand, it appears that most of the recommendations within the Commission report which impact directly on Gallaudet University place restrictions on programming or governance. We find that we cannot support such restraints on our ability to serve deaf people.

Among such recommendations are those which would redirect a portion of Gallaudet research funds to other institutions and agencies, significantly increase the tuition costs to be borne by international students, impose unnecessary revision of the mission of our two national demonstration schools, and eliminate all hearing students from baccalaureate degree programs.

Another recommendation replaces certain board responsibility for oversight of programs with additional oversight by the Department of Education. This flies in the face of the Commission's recommendation that the Gallaudet board be reconstituted in a way which provides for deaf people to assume a greater oversight role.

We have serious reservations about these recommendations. They have potentially devastating impact on the deaf community as well as constraining Gallaudet University in the achievement of its mission.

I have convened a working group which will prepare written comments which explain carefully our points of view on these matters and provide a rationale for our position on each. This written statement will be submitted soon for your consideration as part of the record of this hearing.

We at Gallaudet University look forward to working with you to determine the most appropriate next step. I trust that today marks the beginning of a new dialogue which will continue over the months to come.

Additionally, each of the major professional organizations are now reviewing the Commission report. Information from these groups is vital to Gallaudet as well as to Congress and the Administration in formulating action plans.

Again, we wish to applaud the foresight of Congress which established this Commission with the same legislation that granted University status to Gallaudet. We welcome this recognition and the added responsibility it brings for assuming a greater leadership role and for ensuring excellence in all programmatic endeavors.

Finally, we are encouraged by and pledge our support to your continuing commitment to increased opportunity for deaf people both here and around the world.

Thank you very much.

[The prepared statement of Dr. I. King Jordan follows:]

STATEMENT OF
DR. I. KING JORDAN
PRESIDENT
GALLAUDET UNIVERSITY
SUBCOMMITTEE ON SELECT EDUCATION
HOUSE OF REPRESENTATIVES
WEDNESDAY, MARCH 30, 1988

Mr. Chairman, I appreciate the opportunity to appear before this Committee and to comment on the report of the Commission on the Education of the Deaf. I am pleased to be joined today by the Chair of our Board of Trustees, Mr. Phil Bravin, and by the President of our Student Body, Mr. Greg Hlibok. Also with me are a few members of the Gallaudet faculty, staff and student body. The 240 Gallaudet students from states represented by membership on this Committee send special greetings, along with all members of our University community.

Gallaudet is now entering a new era. Our campus community is energized and has a sense of renewed commitment to our unique mission as a distinguished special university. The events of the past few weeks have brought a heightened sensitivity with respect to the role of deaf people and the value of deaf culture to Gallaudet University and, I believe, to our society as a whole. Our Board of Trustees has already acted on the Commission recommendation to increase representation of deaf persons among its membership. As our review and response to the Commission report continues, I want to assure this Committee that we shall utilize this new energy to bring a fresh perspective to the issues facing Gallaudet University.

We have appreciated the opportunity to work with the Commission on the Education of the Deaf in examining a number of important issues relevant both to postsecondary education and to the field in general. The eighteen month effort by the Commission provided a forum for numerous individuals and groups to share their concerns about the status and future of education of deaf people. I would ask the Committee to please consider my brief tenure as President of Gallaudet University and to afford me the opportunity to work with my administration in setting an agenda for Gallaudet prior to any legislative action which might be contemplated as a result of the Commission report.

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We at Gallaudet University look forward to working with you to determine the most appropriate next step. I trust that today marks the beginning of a new dialogue which will continue over the months to come. Additionally each of the major professional and consumer organizations are now reviewing the Commission report. Information from these groups is vital to Gallaudet as well as to Congress and the administration in formulating action plans.

Again, we wish to applaud the foresight of Congress, which established this Commission with the same legislation that granted University status to Gallaudet. We welcome this recognition and the added responsibility it brings for assuming a greater leadership role and for ensuring excellence in all programmatic endeavors.

Finally, we are encouraged by and pledge our support to your continuing commitment to increased opportunity for deaf people both here and around the world. Thank you.

GALLAUDET STATEMENT ON TOWARD EQUALITY

REPORT OF THE NATIONAL COMMISSION ON EDUCATION OF THE DEAF

EXECUTIVE SUMMARY

o Gallaudet University commends the National Commission for the thoroughness and energy with which it accomplished its important task.

o Gallaudet University supports the majority of the recommendations of the National Commission on Education of the Deaf, especially in the following areas:

  Prevention and early identification of deafness

  Improvements in elementary and secondary education for deaf students

  Application of the Bilingual Education Act to deaf students

  Regional Postsecondary Education Programs for the Deaf

  Affirmative action for deaf employees in federally supported programs serving deaf students

  Increased federal support for research on deafness

  Improvements in professional standards and training in the field of deafness

  Increased support for technology to support deaf people, especially in the areas of captioning, instruction, and assistive devices.

  Increased support for information clearinghouses on deafness

  Increased support for deaf/blind people.

o Gallaudet indicates its interest in supporting the implementation of these goals through its leadership role in the education of the deaf and through application of its considerable resources in research and outreach.

- Gallaudet disagrees strongly with several of the Commission's recommendations that would severely constrain its programs and would impede accomplishment of its mission. Gallaudet opposes the recommendations that would:

  Redefine the mission of the Model Secondary School for the Deaf

  Greatly increase federal program oversight for Gallaudet

  Severely limit Gallaudet's ability to educate international students

  Deny Gallaudet University the latitude to accept hearing students into its bachelor's degree programs

  Severely restrict Gallaudet's expenditures on research and development

  Greatly increase oversight and external control over Gallaudet research programs.

- Gallaudet thanks the Commission for recognizing the high quality of its research programs and the Congress for permitting this response to the Commission's recommendations.

GALLAUDET STATEMENT ON TOWARD EQUALITY
REPORT OF THE NATIONAL COMMISSION ON EDUCATION OF THE DEAF

Introduction

Gallaudet University appreciates the opportunity to respond to the report of the Commission on Education of the Deaf and commends the Commission for the development of its challenging recommendations. As a major source of resources in the field of deafness, Gallaudet University sees its leadership role complementing the intention of the report and intends to provide whatever support it can in implementation of the recommendations.

Our overall response to the Report of the Commission is one of support. However, as indicated in oral testimony before the Senate Subcommitte on the Handicapped on March 21 and before the House Subcommittee on Select Education on March 31, 1988, we disagree with several of the recommendations, especially as they apply to Gallaudet's programs. We will comment more extensively on these areas in our review of the report's individual chapters.

For example, we are particularly concerned with the recommendation which could dilute our directed research efforts, efforts which we believe (evidenced by citation in the Report) proved very useful to the Commission itself in formulating its recommendations. We are also very troubled by the recommendation which would effectively exclude international students (including Canadians) from our university. Such exclusion would be contrary to our unique historical mission to provide higher education for the world deaf community, a mission which has brought good will to the United States in many parts of the world. Finally, we realize that because a large part of our funds come from the federal government, there is legimate public interest in how these funds are spent. However, as Gallaudet is an independently chartered institution of higher education, we are disturbed by the recommendations that call for additional federal oversight and control of Gallaudet's internal affairs.

Chapter 1: Prevention and Early Identification

Gallaudet supports in principle recommendation 1 to establish a National Institute on Deafness and Other Communication Disorders within the NIH but is concerned about how this institute would be funded. In general, Gallaudet supports the notion of increased funding in research areas related to deafness. Gallaudet itself currently *is* the leading center for research on the education of deaf children, demographics of the deaf population, sign language and deaf culture, genetics of deafness and developmental aspects of deafness. Gallaudet has not been a leader in research on the medical aspects of deafness, and it is quite appropriate that such a center should be established in the

NIH. Gallaudet's principal concern is whether Congress will be willing to appropriate the additional funding that will be needed to make this institute viable. We assume that some of this can be accomplished by pulling together existing programs located in other parts of the NIH into one institute. However, we remain concerned that the Institute be established in the most cost effective manner possible and that its establishment not drain resources from existing research programs. The legislation to establish this Institute has been introduced and Gallaudet will be interacting with its supporters and providing assistance in whatever ways are possible.

Gallaudet is highly supportive of recommendation 2 concerning the establishment of guidelines for early detection screening.

Chapter 2: Elementary and Secondary Education

Gallaudet supports all of the recommendations in this section with the exception of number 16 concerning the Model Secondary and Kendall Demonstration schools. In general, the recommendations in this section have to do with the Department of Education establishing guidelines and requirements for the states. Although we support the spirit of these recommendations, we are concerned that they not lead to excessive bureaucracy in the Department. Given their general soundness, Gallaudet would like to offer its support in the data gathering and monitoring functions that have been proposed, especially through the Annual Survey of Hearing Impaired Children and Youth conducted by Gallaudet's Research Institute.

The survey represents the current best source of existing information on Elementary and Secondary education for the deaf and the best potential data gathering network. We believe that these recommendations should be implemented in the most cost-effective way possible, and this should include the use of currently available data sources such as the Annual Survey. In addition, our Center for Studies in Education and Human Development is currently conducting large scale studies of the factors that influence successful placement of deaf students. Gallaudet particularly wishes to lend its support to recommendations 5 and 6 that would refocus the concept of least restrictive environment toward appropriateness and would require the consideration of the nature and severity of handicapping conditions in the placement of students.

Gallaudet supports recommendation 15, concerning action to apply the Bilingual Education Act to deaf students. Research conducted by the Gallaudet Center for Assessment and Demographic Studies indicates that only a tiny percentage of teachers of the deaf currently use ASL, so funds for training programs would be needed. Gallaudet endorses this recommendation to the extent that it would lead to expansion of the number of deaf teachers of the deaf and to an increase in appropriations for competitive grant programs under the Bilingual Education Act to serve this deaf constituency.

With respect to recommendation 16, concerning submission of annual and evaluation reports and setting priorities at KDES and MSSD, Gallaudet expresses partial support with some reservations. Gallaudet currently receives considerable oversight from federal agencies and the Congress. We view the development and dissemination of these reports as reasonable methods for evaluating and reporting the accomplishments of KDES and MSSD in relation to the stated priorities of the schools. This would include the additional priorities recommended by the Commission. However, Gallaudet would also like to comment about certain impressions developed and reported by the Commission with which we disagree.

We disagree that there is a need to redefine the mission and focus of MSSD so that the student population served by the school more closely mirrors the national demographics of secondary school-aged deaf children. The current student body is already heterogeneous and is relective of the diversity of the national population based on our comparisons with the national sample of more than 48,000 students in the Gallaudet Center for Assessment and Demographic Studies database. In fact, we already enroll greater percentages of students in several of the categories of concern to the Commission than are reflected in the national data. Already approximately 20% of the MSSD student body read at or below the 3rd grade level. The percentage of reported emotional or behavioral problems among MSSD students is three times that found in the national sample (15.3% versus 4.5%). The percentage of MSSD students with learning disabilities is twice that found in the national sample (15.3% versus 8.2%). With these numbers of students in the low functioning category, MSSD will be able to continue to develop materials for use in other schools without the need for significant modification in the basic mission of the MSSD. We feel that it is very important that MSSD maintain its status as a comprehensive high school, with programs for all types of students. It is possible to place greater emphasis on development activities based on identified priorities and this would be our recommendation.

It has also been recommended that KDES and MSSD should develop exemplary programs to meet critical needs as identified by the Commission. It is recommended that KDES and MSSD address these priorities through research, development, training and technical assistance. The response to these four critical areas of need will require careful reallocation of resources to address increased research and development efforts in each of these areas. However, Commission Recommendation 27 proposes a reduction in overall funding for research purposes at KDES and MSSD. A reduction such as this will greatly decrease the ability of KDES and MSSD to respond to the new priorities as proposed in Recommendation 16. The reduction would also decrease the resources available to conduct product and program evaluation activities prior to dissemination of products and services. KDES and MSSD can, with sufficient advance notice, modify their development priorities. But if there is a significant reduction in the funding allocated to research and development, the overall level of activity in relation to new priorities will necessarily be reduced.

Chapter 3: Federal Postsecondary Educational Systems

Gallaudet supports recommendations 17, 18 and 19 concerning the strengthening of the Regional Postsecondary Education Programs for the Deaf (RPEPDs), but questions whether Congress will appropriate additional monies to support their expansion and the training needs implied in the recommendations. In particular, lengthening the funding cycle to 5 years should have a beneficial effect on program effectiveness and continuity. The Commission might also have considered the advisability of increasing the length of the notification of award period to as much as two years before the award is to begin. This would greatly facilitate planning in these programs. A further criterion for program selection of a RPEPD should be its potential to attract a critical mass of deaf students. Gallaudet also supports recommendation 20 which calls for the establishment of ten comprehensive service centers, and we would like to point out that Gallaudet, NTID and the RPEPDs are currently cooperating to coordinate activities related to those outlined in the recommendation. Gallaudet, in particular, is the world leader in the higher education of deaf people and will continue to assist other programs through consortium arrangements and our network of regional centers.

With respect to recommendation 21, concerning the role of the Department of Education's liaison, Gallaudet points out that the Department's oversight role is clearly outlined in the current law. In fact, current oversight from the Office of Special Education and Rehabilitative Services (OSERS) includes elements of program review and budget development such as those outlined in the recommendation, and we feel that those are entirely appropriate.

There is not an instance, to our knowledge, in which a federal liaison or project officer has had oversight jurisdiction for academic programs of a college or university. An important characteristic of collegiate level academic programs is the manner in which certain aspects of governance are shared between faculty and administration. This shared governance concept has served higher education well from its antecedents in Europe down to current day university systems.

As with most colleges and universities, Gallaudet depends rather heavily for programmatic oversight on accrediting bodies. Not only is the entire University accredited by the Middle States Association, but a number of our programs are accredited by state, regional, or national bodies. Internal program oversight of collegiate academic programs historically is heavily weighted by peer and student evaluation, in addition to review by administration and Board. A collegiate faculty, in a similar manner as an accrediting body, would not be able to accede to the intervention of a liaison officer. Gallaudet already has national advisory groups for its elementary and secondary school programs.

The Gallaudet Board of Trustees, through its legislative charter, establishes policy for the general direction and control of the institution. There is probability of conflict between the role of the Board and the role of a Liaison Officer. The Commission has recommended and the Board is acting to increase its deaf membership. Any recommendation for federal oversight that would reduce the role of the Board would fly in the face of the recommendation to increase the oversight responsibility of deaf people.

In summary, Gallaudet already receives extensive oversight. The following groups are among those which regularly have review responsibilities for various aspects of Gallaudet's programs:

- Federal Administration:
  General Accounting Office, Office of Management and Budget, Department of Education
- United States Congress:
  Appropriation and Authorization Committees both of the Senate and House

- o Governing Board and Invited Annual Review:
  Gallaudet University Board of Trustees (Includes one U.S. Senator & two members of the House of Representatives), Independent Auditing Firm
- o Accrediting Bodies:
  Middle States Association (overall review of collegiate programs, KDES and MSSD), Conference of Educational Administrators Serving the Deaf (overall review of elementary and secondary programs) Accrediting bodies which sanction individual programs, e.g., teacher education, social work, speech-language pathology, audiology, rehabilitation counseling, instructional supervision.

In view of the foregoing it seems appropriate to suggest that the role of a Liaison Office focus on information and liaison functions. A centralized source of information about education of the deaf, under the Secretary's administration, could provide useful support to the Administration as well as to Congress.

Recommendation 22 proposes regular program evaluations of Gallaudet University and other postsecondary programs to be conducted by the Department of Education and using outside consultants. Gallaudet University is pleased to cooperate with all federal review bodies as well as submitting regular reports to such agencies and to other constituent groups. Likewise, the five-year reauthorization cycle is perceived as being appropriate. Gallaudet does, however, wish to point out that numerous reviews occur on a regular or cyclical basis. A number of such review processes have been outlined previously in this paper. In particular, the reports prepared for and by accrediting agencies should be utilized and became an important part of this proposed five-year review cycle.

Gallaudet has previously gone on record as opposing recommendation 23 which calls for a radical increase in tuition for foreign students and a cap on their enrollment at 10% of the total. We have presented to the Department of Education a formal report on the cost implications of foreign students at Gallaudet and have appended it to this response. We will not reiterate the arguments developed in that report but will outline our general objections to the recommendation. Gallaudet has, on several previous occasions, indicated that it is an international institution but that it has never turned away qualified U. S. students while admitting international students. In addition, the exchange of ideas that results from having a comprehensive student body forms an important part of the education for our U.S. students. In general, we admit all qualified U.S. students and then admit additional international students up to the capacity of our facilities and resources. This number has tended to be approximately ten percent of total enrollment or slightly more. On the basis of arguments developed in detail in the attached paper, we suggest that the incremental (or marginal) cost of enrolling these students is currently less than the tuition and required fees that they pay. According to this argument there is, therefore, no federal subsidy for these students. We believe that raising tuition to the levels suggested in the Commission's recommendations would have the effect of severely restricting the ability of deaf students from developing nations to attend Gallaudet. In addition, we are concerned that rigid adherence to a 10% cap would be very difficult to accomplish--for example, an enrollment shortfall in U. S. students might accidentally place us in violation of such a requirement. We propose instead a target range of 10 to 15% of total enrollment, but not a fixed cap.

Commission recommendation 24 proposes that Congress deny Gallaudet University the latitude to accept hearing students to its baccalaureate programs. Gallaudet fully recognizes and reaffirms its primary mission of serving hearing impaired students at the undergraduate level. Accordingly, no strong issue is taken with this recommendation. We would point out, nonetheless, that there are some advantages to enrolling a very limited number of hearing undergraduates in majors which would lead to their becoming professionals in human service occupations associated with service to deaf people. We believe that the early immersion of these students in a deaf cultural environment represents an important part of their career preparation. There is no intent, nor would we permit, the utilization of resources which are otherwise needed or intended to support deaf students. Nor would we enroll a hearing person in preference to a deaf applicant. Currently, Gallaudet has five hearing students enrolled in bachelor's degree programs.

Gallaudet wholeheartedly accepts recommendation number 25, concerning its affirmative action programs for deaf employees. This recommendation should apply to all federally supported programs serving the deaf, not only those at the postsecondary level. Gallaudet also indicates that its Board of Trustees is currently studying ways to come into compliance with recommendation 26. We request that the Board be given a reasonable amount of time to achieve this goal before legislative action is contemplated.

Chapter 4: Research, Evaluation and Outreach

Gallaudet is pleased that the COED report acknowledged the high quality of its research. Explicitly, the Summary of Chapter 4 states that GU has ". . . done good research . . . [and should receive continued funding to] . . . ensure a robust research program." On an implicit level, the worth of GU's research to the Commission was apparent in that over half of the report's citations of published research was to work conducted by Gallaudet researchers. That Gallaudet's research served as the major reference source for the report speaks to the value and uniqueness of the GU research effort.

We note first that if the intent of the report is to increase the quantity and quality of the research being done on deafness as well as the diversity of settings in which this research occurs, then we agree with this spirit. From our point of view, the Department of Education's extramural funding for deafness research represents a very small percentage of its resources; likewise, NIH expenditures for research on this topic are low in proportion to the size of the affected population. The only consistent long-term commitment to deafness research of any breadth has been through the collective efforts of the programs of Gallaudet. Even the level of funding for this effort is modest by major research institute standards. In order to understand phenomena associated with deafness, significantly more resources are needed.

If the spirit of the report is to increase the quality and quantity of research about deafness, we note that the specific recommendations (nos. 27 and 28) do not accomplish the underlying purposes. If adopted, they would have a devastating effect on Gallaudet's ongoing directed research efforts as well as disrupting the Pre-College's instructional, development, and evaluation work. For these and other reasons discussed below, Gallaudet expresses disagreement with these two recommendations.

Recommendation #27 calls for the establishment at GU of a National Center on Deafness Research not only to conduct in-house research but also to fund research at other institutions. We note first that the $7.8 million figure cited in the COED report (p. 92) as being available at GU to fund a Center is highly misleading. From the GU general fund, the Gallaudet Research Institute (GRI)--the locus of GU directed research--receives only $2.6 million. This amount includes money from other revenue sources in addition to the federal appropriation. The remaining $5 million supports instructional research, development, and evaluation at Pre-College Programs. This latter figure includes estimated amounts to support approximately 20% of MSSD and KDES classroom teachers' time that is devoted to research, development and evaluation. Reallocation of these funds to support the proposed Center would be impractical and would decimate those educational programs.

The $7.8 million appears to represent an overestimate of $700,000 in funding for overall University research. The COED appears to have derived this figure from estimated University research ($2.6 million) and funding for Pre-college research and development ($5.3 million). However, both figures include $700,000 transferred from the Pre-College to the University to support Pre-college oriented research in Fiscal Year 1987.

Recommendation #27 also indicates that the proposed Center should award some of its funds competitively to other research organizations. Gallaudet researchers would be disallowed from competing for the grant monies of the Center. Such a proscription belies the Commission's commitment to competitive research. As indicated in Chapter 4 (summary), ". . . competition enhances both the quality and relevance of research inasmuch as it stimulates innovation and excellence . . ." and also (pg. 91) ". . . scarce funds should be made available to support the best research regardless of where it is performed." Evidence that some of the "best research" has been conducted at Gallaudet University is supported by the Commission Report and by the success of Gallaudet researchers in acquiring extramural funding. It would be to the detriment of future research on deafness and against public interest to exclude Gallaudet University researchers from competition for these federal funds.

Finally, we note that the present appropriation for the National Eye Institute is almost $225 million, of which $198 million supports extramural projects. Our best estimate for ear research is approximately $35 million. We believe that a greater share of federal research funds should be made available to deafness research rather than the Commission's suggestion of reducing existing support to GU.

In summary, we disagree with recommendation #27 calling for the establishment of a deafness research center at GU with significant funding diverted to other institutions, because it would not only disrupt our current research efforts, but also other vital educational functions of the University. We do agree, however, with the statement elsewhere in the COED report (p. 92) that Gallaudet's ". . . overall level of research funding . . . should be maintained (or increased)" to ensure a robust program. Further, we believe that additional funds should be appropriated to various federal agencies (i.e. Department of Education, National Science Foundation, National Institutes of Health, Department of Labor) to enhance existing and future competitive grant and cooperative agreement programs.

Recommendation #28 calls for external review to select GU research projects. We object to the specific procedures in this recommendation, which emulate the Federal Register process, and which may infringe on the academic freedom of a normal University function. We strongly believe that applied to our directed research programs, the specific recommended procedures (public comment by consumers and researchers followed by project selection based on peer review) are unnecessary and cumbersome. The administrative expense associated with the procedures would be costly and inefficient. Further, cost-efficient external review would be difficult, given the [illegible] of Gallaudet research programs which include the following: Assessment and Demographic Studies, Auditory and Speech Sciences, Education and Human Development, Culture and Communication Studies, Genetic Services, Mental Health Research, Technology Assessment.

Nevertheless, we recognize the importance of external advisement and we are now reviewing our overall process of research project selection. Recently, the GRI appointed a subcommittee of its research directors to establish enhanced and cost-efficient procedures for external advisement.

We also point out that externally funded research projects of the GRI are screened and selected for funding according to stringent grant procedures of sponsoring federal and private agencies. These projects are only awarded grant funds after critical evaluation and ranking through the peer review systems of agencies such as National Institutes of Health and the Department of Education. The review boards and institute councils of these agencies may include consumer representatives from interested constituency groups as members.

Chapter 5: Professional Standards and Training

Recommendations 29-39 provide a very clear picture both of qualitative and quantitative issues in professional personnel areas. The recommendations are central to identifying and satisfying crucial needs in maintaining an appropriate cadre of professionals to work with hearing impaired persons. Ensuring that appropriate standards and policies are in place for improving and monitoring the availability and competence of professional personnel is crucial.

Gallaudet University provides the most extensive array of professional training programs in the various fields related to deafness. We have traditionally taken a strong leadership role in promoting improvements both in the development of professional standards and in the provision of adequate training programs and will continue to do so.

Chapter 6: Technology--Progress and Potential

Our response to the recommendations of Chapter 6 regarding Captioning, uses of technology in instruction and the development of improved devices for deaf people is most supportive.

It is clear that the amount of captioning needs to be increased and we agree with the Commission that greater consumer use of captioning coupled with decreased production costs will help provide the incentive for private sponsors to support this effort. As the Commission correctly points out, the suggestion to issue regulations to require broadcasters and cable-TV programmers to caption their programming (Recommendation 40) is controversial among the networks. It is our hope that some reasonable solution could be worked out.

We are concerned, as is the Commission, that federal funds for captioning be used to best advantage. The Office of Media Services and Captioned Films currently has this responsibility, and it is questionable that a Corporation of Closed Captioning (Rec. 41) would be needed. What is needed is a program to ensure that pressure is put on the private sector to maximize the number of captioned programs.

Recommendations 42 and 45, suggesting that all new TV sets be capable of decoding, somewhat parallel to the requirement that new TV sets have UHF capability, would be a much needed development. Gallaudet is also highly supportive of recommendations 43 and 44 concerning communication accessibility of federal proceedings and open captioning on federally supported instructional materials.

We agree that Congress should provide increased funding for the development of technology for deaf people (both instructional and otherwise) (Recommendation 46) and such technology should be made available on a wide-spread basis (Recommendation 47).

As a pioneer in the development of assistive devices resource centers and in hosting research, projects, and symposia in technology for deaf people, Gallaudet University is indeed in a position to support Recommendations 48 (assistive devices resources centers) and 49 (national symposia on media and technology), and can provide leadership and advice. The Media Services and Captioned Films program has long been an important program in the education of the deaf and we support Recommendation 50 leading toward its more efficient utilization.

Chapter 7: Clearinghouses and Committee on Deaf/Blindness

The Commission recommendation suggesting improvement in its clearinghouse network is most appropriate. Testimony to the Commission revealed a disappointingly large number of problems within the information provision and exchange as well as referral services. Improved use of networking technology and basic guidelines for service and referral would be useful. Gallaudet provides extensive information and referral services within and through both our National Information Center on Deafness and other units of the University. In fact, Gallaudet's National Information Center has received a grant from OSERS to provide for study of the options available for establishing a national network and for identifying and implementing data bases needed to disseminate information on hearing loss and deafness.

Over the past two decades Gallaudet University has become increasingly involved in service to deaf/blind persons. These services include enrollment of deaf/blind students in all levels of its instructional programs, extensive service to deaf/blind adults locally and nationwide, technical assistance programs, and the hosting of national and international meetings of and for deaf/blind persons. During this time, Gallaudet has been a member of the National Advisory Committee for the Helen Keller Center for the Deaf/Blind. The Commission recommendation to engage in further extensive study of the needs of deaf/blind persons is very appropriate and Gallaudet University is pleased to lend support to such an effort. Within the past year, Gallaudet was awarded a Cooperative agreement under the OSERS Program for Services to Deaf-Blind Children and Youth to establish a National Information Center with a focus on the dissemination of information on effective approaches to educating deaf-blind children.

APPENDIX

International Student Cost Analysis

Gallaudet's International Role in the Education of the Deaf

As the first, and still the only free-standing bachelor's degree granting institution in the world for the deaf, Gallaudet has always felt a special responsibility to the world deaf community. According to Gallaudet Archives the first international student was admitted in 1881. At the banquet of the International Congress on Education of the Deaf, which met at Gallaudet June 22-28, 1963, Anthony J. Celebrezze, the Secretary of Health, Education and Welfare, said, **"This is more than an American institution - it is an international institution."** More recently, Congressional support for Gallaudet's international mission was reaffirmed by Senator Weicker at the 1985 oversight hearings conducted by the Senate Subcommittee on the Handicapped. Gallaudet serves an important international mission which encourages international relationships. A diversified student body comprised of American and international students is critical to the vitality of the programs at Gallaudet and serves to enhance the education of our U.S. students. In addition, many of these students, upon returning to their nations of origin, have provided stimulus for development of programs and services for deaf people in their countries.

Gallaudet's Tuition Policy

Concern over possible federal budget reductions led to the implementation of a 50% surcharge for international students in the fall of 1983. In the fall of 1986 that percentage was lowered to 20%. Tuition for all students was increasing at a rate of $350 per year. This along with the 50% surcharge placed what seemed like an unreasonable burden upon the international students who wish to attend Gallaudet. Because of the rapid increase in the general tuition rate, international students paid more in FY 88 with only a 20% surcharge than they did in FY 86 with a 50% surcharge, $3,501 in FY 88 vs $3,171 in FY 86 (See Table 1).

Cost of Educating International Students

There is not, per se, any federal subsidy for foreign students at Gallaudet. Gallaudet enrolls all qualified U.S. deaf citizens who meet the requirements for admission. That is Gallaudet's fundamental commitment and we have never deviated from it; our programs are planned and designed with that basic consideration in mind. In addition, we enroll a number of international students up to the capacity of our facilities and other resources. In the fall of 1987, that number was 218 (187 undergraduates and 31 graduate students). We do not actively recruit these students. Currently, our federal appropriation makes up about 75% of the support for University Programs. The question about costs of educating international students implies that there is a fixed unit cost for educating students at Gallaudet, and that somehow if we did not enroll international students our programs and expenditures would be smaller. We suggest that, in fact, this is not at all clear--the sizes of most of our academic departments are predicated on a general range of student enrollment and could not be significantly reduced if our enrollment were reduced by 218 students. In addition, there are fixed plant and institutional support costs that would be present with or without international students. What is needed here is an analysis of incremental (marginal) costs and this has proved to be a very thorny question in higher education. However, below we will address the question of institutional costs related to adding additional students to our enrollment.

In determining its cost per student, Gallaudet has for some time employed a method of calculating full cost that was introduced by the GAO in its first audit of Gallaudet programs. According to this method of calculating cost, total educational and general expenditures as reported in the annual Higher Education General Information Survey (HEGIS) are divided by total Full-time equivalent enrollment (FTE). Calculated in this way, total cost per student at Gallaudet in FY 87 was about $25,700. Total educational and general expenditures includes such expenditure categories as research and public service that are not directly related to the provision of educational programs to currently enrolled students. In addition, functions such as research and public service consume administrative resources of the university. For these reasons, in order to calculate a realistic educational cost per student it is necessary to remove expenditures for research and public service and indirect costs associated with these activities. There are several ways of factoring out these non-educational costs. In the second GAO report issued in 1986, such a calculation was made and costs for educating students were found by the GAO to be approximately $15,900 in FY 85. An additional $9,300 per student was found to have been spent on research, public service and other activities. If we apply the same logic to our current costs we get a cost for educating each student of approximately $16,000 for FY 87 or nearly the same as in FY 85. This steady cost is a result of rising enrollment and moderating expenditures. We would anticipate that these costs will be at approximately the same level for the next several years.

The nature of incremental cost and the extent of the economies that Gallaudet has been able to introduce are illustrated by the fact that Gallaudet's average costs per student have not increased in real dollars during the past three years, while enrollment was increasing rapidly. In fact since 1984, the total cost (GAO I method) has actually declined (see Table 3). This suggests that the incremental cost per student is less than the average cost. In fact, the decrease in cost per student is even more dramatic when we consider that there was general inflation in higher education of 16% during this period (Higher Education Price Index - HEPI). Table 3 shows what the cost per student would have been in 1984 dollars in each of the years following 1984. In order to calculate an incremental cost per student for 1987 over 1984, it is first necessary to calculate, in 1987 dollars, the cost of educating the 1,472 students enrolled in 1984. This is done by first inflating the total expenditures in 1984, by the HEPI, to 1987 levels ($40.4 million in '84 to $46.9 million in '87). The latter number is the cost, in 1987 dollars, of educating the 1,472 students enrolled in 1984 (Table 3). The difference between this number and the actual expenditures of $49.2 million is the incremental cost in 1987 dollars of educating the additional 440 students who have enrolled since 1984. This number is $2,324,000. Dividing this number by 440 gives a total incremental cost per student of $5,282. Applying the GAO II calculation to this number gives us an incremental educational cost of $3,284, the federal portion of which is $2,463.

In academic year 1987-88, our 218 international students each paid tuition and required fees (excluding room and board) of $3,500. If we assume an average educational cost per student of about $16,000, international students at Gallaudet paid 22% of the average educational cost associated with them. Federal support for Gallaudet University programs is approximately 75%, so the federal component of the educational cost would be about $12,000. Of this amount, international students paid 30%, leaving about $8,500 per student supported by the federal government. At current enrollment levels and tuition rates, federal support for the average cost amounts to a total of about $1.8 million. Given the arguments presented above we maintain that much of this amount is in fixed instructional and plant support that would not be significantly reduced were we to enroll no international students. In terms of incremental educational cost, international students are currently paying more in tuition than the cost associated with them. In Academic Year, 1988-89, all students will pay an additional $100 in tuition, with a 20% surcharge for international students, so that the latter will be paying an increasing share of the average and incremental federal costs associated with them. Room and board fees are calculated to provide substantially full support for dining and residence halls. Thus international students are currently paying substantially full cost for these services.

Future Actions

Because of the concern Congress has expressed in this matter, we will be considering the advisability of reinstating a 50% surcharge for international students in the future. There will be two overriding concerns: Gallaudet's ability to generate financial support for scholarships from the foreign governments of the countries from which students come to Gallaudet; and, most importantly, the ability of these students to pay an increased rate. Given the importance of these international students to our own program and the role of the former in the development of deaf people throughout the world we do not plan at this time to curtail our enrollment of international students. Of course we will not deny admission to qualified deaf Americans. We believe that their relatively small numbers and considerations of incremental or marginal cost indicate that these international students represent a very small investment of federal resources and that the returns are large.

Reinstatement of a 50% surcharge at current tuition and enrollment levels would reduce federal support for the average education cost of these students by about $200,000. Such a surcharge would increase the amount by which their current tuition rate exceeds the incremental cost.

Table 1

Gallaudet Tuition and Required Fees

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
U.S. Students							
Tuition	984	1,334	1,684	2,034	2,384	2,734	2,834
Required Fees	291	320	120	120	120	220	220
Total	1,275	1,654	1,804	2,154	2,504	2,954	3,054
Inter. Students							
Tuition	984	2,001 *	2,526 *	3,051 *	2,861 **	3,281 **	3,401 **
Required Fees	291	320	120	120	120	220	220
Total	1,275	2,321	2,646	3,171	2,981	3,501	3,621

* 50% Surcharge
** 20% Surcharge

Table 2

Recent History of International Student Enrollments

Fiscal Year	FY 87	FY 88	FY 89 *
Undergraduate	186	187	185
Graduate	28	31	30
Total	214	218	215

* Anticipated

Table 1

Incremental Cost of Student Education at Gallaudet

Fiscal Year	Higher Education Price Index	Total E and G Expenditures ($ in 1,000s)	FTE Enrollment	Cost per Student Current $s (GAO I)	Cost per Student 84 Dollars (GAO I)
1984	1.00	$40,406	1,472	$27,450	$27,450
1985	1.07	$43,408	1,691	$25,637	$23,960
1986	1.11	$45,188	1,752	$25,792	$23,236
1987	1.16	$49,195 *	1,912	$25,730	$22,181

* Estimated--Audited financial statement not yet available

o Cost of educating 1,472 students in '87 dollars=$46,871,000

o Increase in student enrollment, '84 to '87 = 1,912 - 1,472 = 440

o Incremental cost of educating additional 440 students in '87 dollars:

$49,195,000 - $46,871,000 = $2,324,000

o Incremental total cost per student = $2,324,000/440 = $5,282

o Incremental educational cost per student, GAO II method :

($16,000/$25,730) * $5,282 = $3,284

o Federal portion of GAO II incremental cost = .75 * $3,284 = $2,463

Mr. Owens. Thank you, President Jordan.

Mr. Hlibok?

STATEMENT OF GREG HLIBOK, PRESIDENT, STUDENT BODY GOVERNMENT, GALLAUDET UNIVERSITY

Mr. Hlibok. I am happy to be here with you this afternoon as a representative of the student body government and as one of the non-professionals in deaf education.

I was raised exposed to deaf education and, at Gallaudet University, have seen a lot. I would like to explain about the events of three weeks ago at the protest.

There are many different kinds of groups of students at Gallaudet University. Some have different methods of language that they use. Some come from different schools, some mainstreamed, some from residential schools, but within the protest, we all came to have one common goal—to have a better life and to have better things for deaf people. That was the common goal that we had.

How these people have been raised are different, but the common goal was what we were all here for.

Thank you.

Mr. Owens. Thank you very much. I want to thank all the members of the panel and congratulate you, Mr. Hlibok, on the success of your movement. You probably have a place in history for having succeeded more rapidly than most movements of this kind have succeeded.

I also want to again congratulate President Jordan on his new appointment. Since all college presidents have a difficult time nowadays, I am sure you face quite a challenge. Congratulations; you have my sympathy.

Mr. Jordan. Thank you.

May I say something, sir? I would appreciate some very special recognition of Mr. Hlibok, because he comes here today at great personal sacrifice. He has missed many classes due to the events of the past few weeks, and we continue to make demands on his time. So, I really want to express to him my appreciation for his coming today.

Mr. Hlibok. Perhaps I should get some extra credit for this as a course? [Laughter.]

Mr. Owens. Again, we appreciate your being here, Mr. Hlibok and congratulations again. You have established a momentum which we hope will not lessen in the days ahead, and you certainly have the support of this subcommittee in achieving your objectives.

I have a few questions.

I do appreciate the fact, President Jordan, that you will be submitting the result of your deliberations within your working group to us. Please make that within the next 10 days. We would appreciate receiving the recommendations that you wish to make with respect to your response to the report of the Commission.

On the matter of redirecting resources, I asked a question of the Commission members before, and I used the term "vulcanization" merely to dramatize. I don't think that is what is happening, but in terms of the kinds of resources that we have which are quite limited, is such decentralization likely to produce greater results in our research and development effort, or are we likely to lessen the impact of it?

Mr. **Jordan**. I will speak first, if I may.

I understand and appreciate the Commission's recommendation that more research needs to be done. I have some concerns with the way in which they calculated the amount of money that they would redirect from Gallaudet to other institutions or to make that competitive and be awarded to people on a competitive basis.

I also have some concern about Gallaudet University going into the business of reviewing grant proposals and awarding the money to other individuals. The Department of Education and the National Institutes of Health and the National Science Foundation have been doing these things for years.

I would encourage the Congress to think about increasing the resources to programs like those that exist in the Department of Education and the National Science Foundation. It would not serve well to try to carve out of the Gallaudet budget the money that now is directed to research.

One thing that I noticed in a quick review of the Commission report was that about half of their references, their data, came from research that had been conducted at Gallaudet. So, the research at Gallaudet is very effective and very well respected in the field, and I would be very sorry to see that damaged.

Mr. **Owens**. Mr. Castle?

Mr. **Castle**. I might add to the answer to your question about decentralization. There is a possible or highly probably harmful effect in over-doing the matter of decentralization. It could lead to a great deal of duplication of effort which doesn't seem to be productive.

Mr. **Owens**. On the matter of hearing students and international students—well, they are two separate items. The international students—has anyone made the effort to get a reading from the State Department or some other branches of our government as to the beneficial products we realize as a nation in having these students from all other nations here?

Two, do they open a door? Is there a door opened as a result of having students from all over the world to collaborative efforts—I asked this question before—collaborative efforts with other governments and other institutions throughout the world in terms of the problems of educating the deaf?

Mr. **Jordan**. Oh, yes, absolutely. The World Congress of the Deaf has its meetings every four years, and there always are large numbers of Gallaudet alumni who are currently leaders in the different nations around the world.

Yesterday, I was interviewed by the Voice of America radio station. During that interview, I was asked to name some individuals and how much impact they had had in their countries who had been educated at Gallaudet University, and I chose Nigeria simply because I began the university setting myself as a new freshman with a new freshman from Nigeria, and we have corresponded on an on-going basis since that time.

In Nigeria, virtually all of the schools for the deaf were established by Gallaudet University alumni. I see the impact of Gallaudet graduates out there in the world as being tremendously large, and it is something that we need to continue. We are the world's only B.A. granting liberal arts institution for deaf people. They don't have other options.

Mr. Castle. I can only speculate in terms of my answer, because NTID does not yet have the experience that Gallaudet University has in terms of serving foreign deaf students. However, as we have developed a rationale for having this opportunity at NTID, a key factor in the rationale is the beautiful cross-cultural influence that would occur from young deaf people from other countries on our own U.S. citizens and vice versa.

Mr. Owens. Mr. Galloway, I just wondered as a regional operation or State based operation, do you feel that there is ample communication and transfer of benefits from these two nationally funded institutions, NTID and Gallaudet?

Mr. Galloway. Not until very recently when NTID started their efforts in making this consortium which we have mentioned. Other than NTID's efforts, no.

I would like to comment on the research part. While we currently do not do any research, I feel that we have the capability and need to conduct different types of research.

For example, most of our students come from the mainstream programs with a very high reading level, high academic performance, and we also have some students who do not have the language capabilities to succeed in a four-year program. We would be in an excellent position to conduct some research in that area, and we would welcome the funding to do that.

Mr. Owens. Mr. Castle, you had a comment?

Mr. Castle. Yes, I would like to point out the consortium effort that has just taken its initiative in the last year and half is one thing, but I would like to point out that NTID in its total history has been a support service model program which most of the post-secondary programs are. It was NTID that established the first training program for training interpreters for the deaf, having done so in 1969. There is not a reflection across the country of that initiative, because there are many programs for training interpreters of the deaf.

It was NTID that blocked out the importance and the proper utilization of proficient note takers as another kind of support service. Note takers and tutor training occurred first at NTID. This has another transfer ability to these other programs at the post-secondary level that are support service models themselves.

Mr. Owens. Mr. Castle noted, President Jordan, that they had a liaison officer and a project officer within OSERS. I wonder, what has been the liaison relationship with respect to Gallaudet? Are you satisfied with the liaison arrangements in the past and present or would you have some recommendations for improving it for the future, liaison between Gallaudet and OSERS?

Mr. Jordan. The relationship between the University and OSERS in the past has been budgetary in the main. There hasn't been any real program officer with an evaluation responsibility.

The model secondary school for the deaf, however, has always had a program officer who has made that kind of review.

The 1986 law did establish a liaison officer in the Department of Education, and the Department of Education is now establishing that Office of Deafness and Communication Disorders. I would suggest that that liaison as defined in the law which is information sharing is a good model. We look forward to working with that once it is up and running.

Mr. **Owens**. Thank you.

Mr. Bartlett?

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. Castle, I wonder if you would take a few minutes and describe in some additional detail NTID's proposal which I find to be quite intriguing and would be very helpful if implemented for what is called the post-secondary consortium which you mentioned in your statement. I have a couple of questions.

First of all, can you give us some idea of the annual costs of that? Secondly, how many people would you contemplate that the program would reach and how would it impact their lives as far as hearing impaired persons? Third, does NTID yet have a proposal for funding that is fleshed out as far as how much would come from Federal funds and how much from other funds?

Mr. **Castle**. Would you first like a brief description of what the consortium is about?

The movement in terms of establishing the post-secondary consortium—the first step in that process was to reconvene an organization that was in existence some eight or nine years ago called the Council of Directors. The Council of Directors turned out to be six individuals, the President of Gallaudet University, the Director of NTID, and the directors of the four federally stipulated regional post-secondary programs for the deaf.

We have brought that council back into existence. We have added to that group in terms of a full council three ex officio members, one of which is from the organization of CSAVR, a second the President of the ADARA organization, and the third would be, hopefully, the Executive Director of the National Organization of State Directors of Special Education. This would become a steering committee.

As the consortium goes further into place, we would have in place a national coordinator and at least six regional coordinators.

The impact eventually in terms of this effort would be primarily for post-secondary individuals who are deaf who are not at the moment able to go to the existing post-secondary programs in the United States. The chief aim of the consortium would be to impact on other people who are post-secondary but who are not going to post-secondary educational programs at the moment.

As we look at the cost factor, we are actually recommending even in the fiscal year 1989 appropriations request for NTID an amount of $400,000. That amount of money would be used for putting in place the national coordinator and the six regional coordinators and building what we would call the master plan.

As we look to out years in terms of funding for the consortium's efforts, we would suggest only in crude estimate that in the second year we may need as much as $1.8 million, in the third year as much as $2.7 million, and then in the three successive years after that maybe an amount of $3.6 million.

We would hope by the third year in dealing with the consortium that we would also be tapping private resources, so the appropriation level after that third year would peak in fiscal year 1992 to a level of $3.1 million out of the $3.6 and then would gradually move downward as we sought more and more private funding. This is the description of the cost factor.

We would assume that in the period of time in which we would begin to impact on individuals, we would have a direct impact on at least 600 people in the fiscal year 1990, 900 people in fiscal year 1991, some 1,200 individuals in fiscal year 1992, and staying at that level for the following two years unless we find ways and means for increasing that number.

Also, an indirect impact for other persons probably in a prevention mode by virtue of dealing with other audiences on an outreach basis would be teachers of the deaf, educators of the deaf, parents of the deaf, vocational rehabilitation counselors of the deaf. So, we would be also hitting home in a prevention mode, meaning lower the number of low achieving deaf for the future by some kind of prevention mechanisms using these kinds of individuals.

We would hope that in the first year, fiscal year 1990, we would strike at least 3000 of such individuals, move up to 4500 in the second year, and close to 6000 in the third, fourth, and fifth years.

Mr. BARTLETT. You wouldn't propose any private sector funding initially for the first two years?

Mr. CASTLE. The proposal at the moment stands for probably no private sector funding in the first mode of planning and not in the first year, fiscal year 1990. However, that is, of course, a reasonable thing to consider, but we would expect that before we get the consortium really moving ahead, it is going to be very difficult to rationalize private funding in that early year.

Mr. BARTLETT. Dr. Jordan, I want to ask Dr. Jordan as well as Mr. Castle a sort of a fundamental question, and I wonder if you could compare for us the number of students that you impact quite successfully at Gallaudet as well as at NTID and compare that to the universe of the number of students that graduate from high school or who at least leave high school every year, that is, the total size of the population that requires additional or post-secondary education?

How large is that gap, and what should we do to fill the gap?

Mr. JORDAN. The best way for me to respond to your question, I think, is to talk briefly about our outreach activities.

The number of students who are on campus at Gallaudet every year is around 2200, but the number of individuals whom we reach through our outreach efforts last year was about 45,000 people. We have six regional centers in the United States, one in the Boston area; one in Florida; one in Eastfield, Texas; one in Johnson City; one in California; and one at Gallaudet itself.

We have major efforts in literacy, in adult basic education, and we do reach a large number of students out there who are not entering regular programs of other kinds.

To compare that to the number of students who are leaving secondary school, I really don't know that number off the top of my head, I am sorry.

Mr. BARTLETT. Mr. Castle?

Mr. CASTLE. Perhaps I can give some brief review of that part of the question. First of all, I would point out that we are currently serving 1245 deaf students at NTID. While dealing with the rubella bulge, we peaked in the fall of 1984 to serve 1320 deaf students at that time. Now that the rubella bulge has taken its entry into post-secondary educational levels, the number will begin to go down, and this is one of the reasons we are talking about the possibility of foreign students at NTID.

However, it was mentioned, I think, by Bill Gainer that there are now in the 150 post-secondary programs across the United States some 7000 students in place. Yet, at the same time, when you look at the current existing from high schools of hearing impaired students, the number is about 7800 right now.

Seventy percent of that 7800 do not go to post-secondary education. It is impossible for them to do so, because the average reading level of that 70 percent is at grade level 2.6. As a matter of fact, the average reading level of the entire 7800 who come out of the high schools is only at grade level 3.5.

So, we find that those who are moving on to post-secondary educational experiences are 30 percent of those individuals leaving high school, and the average reading level of that group is only at grade level 5.7. We also find that at NTID, in order to accomplish a baccalaureate degree, the reading level at the initial point of entering a baccalaureate program must be at least 10th grade level. Otherwise, the chance for success is quite limited.

For our associate degrees, the average reading level must be close to that of the 8th grade. Again, unless that is so, the aptness of completing the program is very low. Even for our certificate diploma programs, technical in nature, the average reading level must be close to the 5th grade level.

I think it is important to point out in addition, though, to talk about the cost benefit of this kind of program which has probably some generalizability to the population we would hope to impact through the consortium.

The average baccalaureate graduate from NTID and the host institution, Rochester Institute of Technology, provides a lifetime earning that is 2.7 times as great as those individuals who do not make it into a post-secondary education program. The average lifetime earnings of the associate degree graduate is close to 2 times as great as those individuals who do not make it into post-secondary programs.

I might also quickly point out that in terms of those who don't go into post-secondary programs, they do indeed enter the labor force, but whether or not they find jobs is another question, and we do detect that at least 19 percent of those individuals are not currently employed, and most of the others, if they are employed, are probably under-employed and could achieve better in the employment market if they had a different kind of training.

Mr. **Bartlett**. Mr. Galloway, did you want to respond?

Mr. **Galloway**. Yes. I would like to comment on this issue.

Mr. Lauretson of St. Paul Technical Institute has previously testified that, because of the lack of funding, they have had to keep the number of students limited, and they have not been able to provide summer school for the last three years. If the funding were available, they could serve many more students.

We have the same problem in California. We need to limit the number of students that we can serve because of the interpreting services. It costs money, and we are not able to increase the number of students, and we have never had summer school.

Mr. **Bartlett**. Mr. Hlibok, my question of you is, as a student and as you have óbserved your fellow students graduate from Gallaudet, in your judgment in today's environment of 1988, what are the principal barriers to employment of a Gallaudet student as you see your fellow students graduate and as you see the ones who don't achieve employment? Give us a sense as to why some don't end up fully employed.

Mr. **Hlibok**. Well, since Gallaudet established a new program, EPOC program—it is an off-campus program—things have improved, and many deaf people got a lot of jobs through that kind of placement. It is improving so far, but as far as I know, many deaf students who do get degrees at Gallaudet University and get jobs go off, and they don't get jobs that are similar to what they majored in.

Maybe it is because the jobs that they applied for—maybe they are not ready to hire, but the EPOC program now has been successful in educating those companies and the hearing people who are hiring deaf people saying that deaf people are capable of working, and, so far, the number of students who graduate from Gallaudet University are getting more and more jobs going from Gallaudet and going into the working world.

Mr. **Bartlett**. So, among other things, perhaps we should explore an education program for hearing employers.

Mr. **Hlibok**. Yes, perhaps.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. **Owens**. I want to thank the panel again, and let me point out to Mr. Hlibok, it is not a tragedy always if you end up being employed in an area for which you did not train. I understand your area of expertise will probably be engineering, and you are training as an engineering student, but you might end up in politics. [Laughter.]

Mr. **Owens**. Thank you, again, members of the panel. We appreciate your testimony.

We now enter the second phase of our hearing as we focus on the Office of Special Education programs. We will have a three-minute recess to allow those who are leaving to leave, and we will begin again in three minutes.

[Recess.]

Mr. **Owens**. The hearing will come to order. Please be seated.

We are pleased to welcome Mrs. Madeleine Will, Assistant Secretary for the Office of Special Education and Rehabilitative Services at the Department of Education. She is accompanied by Tom Bellamy, the Director of the Office of Special Education Programs at the Department of Education.

Madam Secretary, you may begin.

STATEMENT OF HON. MADELEINE WILL, ASSISTANT SECRETARY, OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION, ACCOMPANIED BY THOMAS BELLAMY, DIRECTOR, OFFICE OF SPECIAL EDUCATION PROGRAMS, DEPARTMENT OF EDUCATION

Mrs. WILL. I am pleased to testify before you today on the progress being made by the Office of Special Education and Rehabilitative Services and the States in implementing the revised preschool grant program for handicapped children aged 3 through 5 and the new early intervention program for infants and toddlers with handicaps. In addition, I want to report on accomplishments in compliance monitoring and on progress in developing transition programs for handicapped youth.

In terms of implementing the revised preschool and new early intervention programs, I want to describe what we expect to accomplish, the evidence we have that those expectations are being met, the problems we are encountering in implementation, and the solutions we are developing to remedy those problems.

The Education of the Handicapped Act Amendments of 1986 changed the preschool grant program from one that provided a financial incentive to increase services to children with handicaps to one that requires participating States, after a phase-in period, to provide a free appropriate public education to all 3 through 5-year-old children with handicaps.

The goal of the preschool grant program is to have preschool services available to all children with handicaps aged 3 through 5 by fiscal year 1991. As part of the Education of the Handicapped Amendments of 1986, Congress created significant financial incentives to encourage States to increase the number of preschool children served and to help them in developing additional programs to meet the needs of these children.

I am happy to report that significant progress has been made in accomplishing these goals. States have estimated that during this school year, they would be serving about an additional 31,000 children, an increase of almost 12 percent over the number served last year. This compares with an increase of 2 percent in fiscal year 1987, the year preceding this new program.

I am also pleased to report that all States are currently participating in this program. The participation of all States in the preschool grant program and the significant increase in the number of preschool children served show that we are making important progress in achieving our goal of making a free appropriate public education available to preschool handicapped children.

Although we are very pleased about the progress that has been made, we are also concerned about some early problems in implementation. We are concerned about the statutory requirement that bonus payments for additional children to be served in fiscal years 1987 through 1989 must be made on the basis of State estimates rather than on the basis of actual child counts.

Under the law, if States do not meet their estimates, their preschool grant allocations must be adjusted downward in the following fiscal year. These adjustments are administratively burdensome for States.

Therefore, the Department will submit legislation to change current law so that allocations for the additional children to be served in fiscal year 1989 would be based on the December 1, 1989 child count. This change would eliminate the need for adjustments in fiscal year 1990 when the statutory provision for bonus payments is no longer in effect.

We are also concerned that, based on inquiries from States, there may be confusion about the States' obligation to provide FAPE to each handicapped child receiving services under the program. As a result of this confusion, some children who are entitled to FAPE may not be receiving it.

We are undertaking two initiatives to ensure that States are aware of their obligations and are complying with the EHA requirements. First, we are targeting our monitoring activities to include preschool program implementation in States in which we have reason to believe there may be problems.

Second, the Office of Special Education Programs will issue a policy memorandum to clarify the application of FAPE requirements to preschool children during the phase-in period and thereafter.

Congress also authorized under the Education of the Handicapped Act Amendments of 1986 a new program for infants and toddlers with handicaps and their families, Part H. The purpose of the program is to assist States in developing and implementing statewide systems of coordinated, comprehensive, multi-disciplinary, interagency programs to provide early intervention services to all children with handicaps aged birth through 2 and their families.

We had several expectations for this program. First, we hoped all States would participate. We were also determined to provide timely technical assistance and information to participating agencies to assist them in understanding the program.

Overall, we have been successful in accomplishing these goals. First, all States are participating in this program.

Second, OSERS has also provided technical assistance to State agencies. In July of 1987, OSEP, in cooperation with the Division of Maternal and Child Health of the Department of Health and Human Services, held a conference for representatives of the lead agencies responsible for coordinating the program to assist them in understanding program requirements.

In addition, in 1987, OSEP initiated an Early Childhood Research Institute on Policy to provide statistical and research information to States regarding the implementation of the early intervention program. This institute will provide annual descriptive statistics on the status of States' efforts to provide comprehensive services to handicapped infants and toddlers as well as explanatory research on the effects of State policies. This information will be disseminated to State policy makers to assist them in developing comprehensive services for infants and toddlers.

We do expect some problems in the implementation of the new Part H program in that the new legislation presents some new challenges to the States. For example, States must develop procedures to design an individualized family service plan which must incorporate a multi-disciplinary assessment of the infant's or toddler's unique needs, the family's needs, and the services required to meet those needs. States are also required to establish a single line of responsibility for the general supervision of the Part H program.

A particular challenge to States in carrying out this general supervisory responsibility is the development of capacity at the State and local level to ensure the coordination of fiscal resources and services.

In order to assist the States in meeting these challenges, OSEP has established a new national early childhood technical assistance system, NECTAS, which will place primary emphasis on assisting State agencies in areas of State identified priorities. The purpose of this emphasis is to provide the support necessary to States to meet their responsibilities under this program.

Under the EHA, responsibility for ensuring compliance with program requirements rests with the State Education Agency, SEA. It is the role of OSERS to ensure that States are adequately exercising this supervisory responsibility.

The primary focus of OSERS' monitoring system is, therefore, directed toward the SEA and is specifically designed to look at whether the SEA is exercising its general supervisory authority over the programs in its State, including whether the SEA has an adequate system of compliance monitoring.

In the past three years, OSEP has monitored 24 States all of which were found to have varying degrees of deficiencies in their monitoring systems. For example, two of the most common findings are that States fail to monitor every EHA requirement or fail to monitor some programs within the State such as special schools.

In an effort to correct such problems, States have been required to amend their monitoring procedures and monitoring instruments. In addition, we have recently completed a technical assistance effort with a number of States to assist them with the development of new monitoring structures.

The importance of this focus in OSERS' monitoring efforts cannot be discounted. If OSERS can ensure that States are adequately carrying out their oversight responsibilities through the application of good, comprehensive monitoring practices, better services for handicapped children will result.

Despite the positive results of our monitoring in many areas, I am not totally satisfied with the efficiency of the OSERS effort. As you know, the development of a rational, effective monitoring system has been a priority for the past several years. When we began the effort, we experienced a number of delays in the process because of the need to train staff, test and revise monitoring instruments, and generally work out problems that normally arise when implementing new systems.

The result was unanticipated delays in the issuing of monitoring reports following on-site monitoring visits.

We have made improvements. The time lapse between conclusion of on-site visits and issuance of draft reports has been reduced by one-third. I have recently added more manpower to our monitoring staff, and I hope to make further improvements in the monitoring system. I also welcome suggestions from the Subcommittee as to methods for additional improvements.

Youth with disabilities face an uncertain future when they leave the nation's secondary schools. Some studies have indicated that only between 50 and 60 percent of graduates are employed.

As a result of these figures, OSERS, in 1983, announced a national priority on transition from school to employment. This was followed closely by the Education of the Handicapped Act Amendments of 1983 which established a new program to assist in the transition of youths with handicaps to employment, continuing education, and adult services.

I am pleased to report that we have made substantial progress since 1983 in the research and demonstration aspects of transition programming. Our research and demonstration programs have developed a solid knowledge base regarding the critical features of transition programming which are necessary to allow disabled youth to move from the classroom into employment.

However, I continue to be concerned about the unacceptably high rate of unemployment faced by handicapped youth. We must now assure that the knowledge we have acquired is not put on the shelf. We must use the knowledge as a base for encouraging States to implement effective transition programs for all handicapped students.

We must move to capacity building in our transition programs. Finally, we must also continue to work on eliminating the economic disincentives to employment for handicapped individuals which discourage many from seeking or holding jobs.

It is my belief that transition from school to work is the single most critical problem facing handicapped youth today, for it is only through adequate employment that we can foster independence and maximum participation in adult society.

No longer is it sufficient to look at high school graduation alone as a successful outcome measure for disabled youth. Success must be measured by the ability of disabled high school graduates to fully participate in adequate, meaningful work.

Finally, I have been asked to comment on the report of the Commission on the Education of the Deaf. My statement, which was presented before the Senate Subcommittee on the Handicapped on March 21, is appended to this testimony.

I would now be happy to answer any questions from the members of the Subcommittee.

[The prepared statement of Madeleine C. Will follows:]

STATEMENT OF

MADELEINE C. WILL

ASSISTANT SECRETARY FOR SPECIAL EDUCATION

AND REHABILITATIVE SERVICES

U.S. DEPARTMENT OF EDUCATION

ON THE

EDUCATION OF THE HANDICAPPED ACT

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

MARCH 30, 1988

I am pleased to testify before you today on the progress being made by the Office of Special Education and Rehabilitative Services (OSERS) and the States in implementing the revised Preschool Grant program for handicapped children aged 3 through 5 and the new Early Intervention Program for Infants and Toddlers with Handicaps. In addition, I want to report on accomplishments in compliance monitoring and on progress in developing transition programs for handicapped youth.

In terms of implementing the revised preschool and new early intervention programs, I want to describe what we expect to accomplish, the evidence we have that those expectations are being met, the problems we are encountering in implementation, and the solutions we are developing to remedy these problems.

Preschool Grant Program

The Education of the Handicapped Act Amendments of 1986 changed the Preschool Grant program from one that provided a financial incentive to increase services to children with handicaps to one that requires participating States, after a phase-in period, to provide a Free Appropriate Public Education (FAPE) to all 3 through 5 year old children with handicaps.

The goal of the Preschool Grant program is to have preschool services available to all children with handicaps aged 3 through 5 by fiscal year 1991. As part of the Education of the Handicapped Act Amendments of 1986 (EHA), Congress created significant financial incentives to encourage States to increase the number of preschool children served and to help them in developing additional programs to meet the needs of these children.

I am happy to report that significant progress has been made in accomplishing these goals. States have estimated that during this school year they would be serving about an additional 31,000 children, an increase of almost 12 percent over the number served last year. This compares with an increase of 2 percent in fiscal year 1987, the year preceding this new program. I am also pleased to report that all States are currently participating in this program. The participation of all States in the Preschool Grant program and the significant increase in the number of preschool children served show that we are making important progress in achieving our goal of making a free appropriate public education available to preschool handicapped children.

Although we are very pleased about the progress that has been made, we are also concerned about some early problems in implementation. We are concerned about the statutory requirement that bonus payments for additional children to be served in fiscal years 1987 through 1989 must be made on the basis of State estimates rather than on the basis of actual child counts. Under the law, if States do not meet their estimates, their Preschool Grant allocations must be adjusted downward in the following fiscal year. These adjustments are administratively burdensome for States. Therefore, the Department will submit legislation to change current law so that allocations for the additional children to be served in fiscal year 1989 would be based on the December 1, 1989 child count. This change would eliminate the need for adjustments in fiscal year 1990, when the statutory provision for bonus payments is no longer in effect.

We are also concerned that, based on inquiries from States, there may be confusion about the States' obligation to provide FAPE to each handicapped child receiving services under the program. As a result of this confusion, some children who are entitled to FAPE may not be receiving it.

We are undertaking two initiatives to ensure that States are aware of their obligations and are complying with the EHA requirements. First, we are targeting our monitoring activities to include preschool program implementation in States in which we have reason to believe there may be problems. Second, the Office of Special Education Programs (OSEP) will issue a policy memorandum to clarify the application of FAPE requirements to preschool children during the phase-in period and thereafter.

Early Intervention Program

Congress also authorized under the Education of the Handicapped Act Amendments of 1986 a new program for infants and toddlers with handicaps and their families (Part H). The purpose of the program is to assist States in developing and implementing statewide systems of coordinated, comprehensive, multi-disciplinary, interagency programs to provide early intervention services to all children with handicaps, aged birth through 2, and their families.

We had several expectations for this program. First, we hoped all States would participate. We were also determined to provide timely technical assistance and information to participating agencies to assist them in understanding the program.

Overall, we have been successful in accomplishing these goals. First, all States are participating in this program.

Second, OSERS has also provided technical assistance to State agencies. In July 1987, (OSEP), in cooperation with the Division of Maternal and Child Health, Department of Health and Human Services, held a conference for representatives of the lead agencies responsible for coordinating the program to assist them in understanding program requirements.

In addition, in 1987 OSEP initiated an Early Childhood Research Institute on Policy to provide statistical and research information to States regarding the implementation of the early intervention program. This institute will provide annual descriptive statistics on the status of State's efforts to provide comprehensive services to handicapped infants and toddlers, as well as explanatory research on the effects of State policies. This information will be disseminated to State policy makers to assist them in developing comprehensive services for infants and toddlers.

We do expect some problems in the implementation of the new Part H program in that the new legislation presents some new challenges to the States. For example, States must develop procedures to design an Individualized Family Service Plan (IFSP), which must incorporate a multi-disciplinary assessment of the infant's or toddler's unique needs, the family's needs, and the services required to meet those needs. States are also required to establish a single line of responsibility for the general supervision of the Part H program. A particular challenge to States in carrying out this general supervisory responsibility is the development of capacity at the State and local level to ensure the coordination of fiscal resources and services.

In order to assist the States in meeting these challenges, OSEP has established a new national early childhood technical assistance system (NECTAS). NECTAS will place primary emphasis on assisting State agencies in areas of State-identified priorities. The purpose of this emphasis is to provide the support necessary to States to meet their responsibilities under this program.

Monitoring

Under the EHA, responsibility for ensuring compliance with program requirements rests with the State Education Agency (SEA). It is the role of OSERS to ensure that States are adequately exercising this supervisory responsibility. The primary focus of OSERS' monitoring system is therefore directed toward the SEA and is specifically designed to look at whether the SEA is exercising its general supervisory authority over the programs in its State, including whether the SEA has an adequate system of compliance monitoring.

In the past three years, OSEP has monitored 24 States, all of which were found to have varying degrees of deficiencies in their monitoring systems. For example, two of the most common findings are that States fail to monitor every EHA requirement or fail to monitor some programs within the State, such as special schools.

In an effort to correct such problems, States have been required to amend their monitoring procedures and monitoring instruments. In addition, we have recently completed a technical assistance effort with a number of States to assist them with the development of new monitoring structures.

The importance of this focus in OSERS monitoring efforts cannot be discounted. If OSERS can ensure that States are adequately carrying out their oversight responsibilities through the application of good, comprehensive monitoring practices, better services for handicapped children will result.

Despite the positive results of our monitoring in many areas, I am not totally satisfied with the efficiency of the OSERS effort. As you know, the development of a rational, effective monitoring system has been a priority for the past several years. When we began the effort, we experienced a number of delays in the process because of the need to train staff, test and revise monitoring instruments and generally work out problems that normally arise when implementing new systems. The result was unanticipated delays in the issuing of monitoring reports following on-site monitoring visits. We have made improvements. The time lapse between conclusion of on-site visits and issuance of draft reports has been reduced by one-third. I have recently added more manpower to our monitoring staff and I hope to make further improvements in the monitoring system. I also welcome suggestions from the subcommittee as to methods for additional improvements.

Transition

Youth with disabilities face an uncertain future when they leave the nation's secondary schools. Some studies have indicated that only between 50-60 percent of graduates were employed. As a result of these figures, OSERS, in 1983, announced a national priority on transition from school to employment. This was followed closely by the Education of the Handicapped Act Amendments of 1983 which established a new program to assist in the transition of youths with handicaps to employment, continuing education, and adult services.

I am pleased to report that we have made substantial progress since 1983 in the research and demonstration aspects of transition programming. Our research and demonstration programs have developed a solid knowledge base regarding the critical features of transition programming which are necessary to allow disabled youth to move from the classroom into employment.

However, I continue to be concerned about the unacceptably high rate of unemployment faced by handicapped youth. We must now assure that the knowledge we have acquired is not put on the shelf. We must use the knowledge as a base for encouraging States to implement effective transition programs for all handicapped students. We must move to capacity-building in our transition programs. And finally, we must also continue to work on eliminating the economic disincentives to employment for handicapped individuals which discourage many from seeking or holding jobs.

It is my belief that transition from school to work is the single most critical problem facing handicapped youth today. For it is only through adequate employment that we can foster independence and maximum participation in adult society. No longer is it sufficient to look at high school graduation alone as a successful outcome measure for disabled youth. Success must be measured by the ability of disabled high school graduates to fully participate in adequate, meaningful work.

Commission on the Education of the Deaf

Finally, I have been asked to comment on the Report of the Commission on the Education of the Deaf. My statement, which was presented before the Senate Subcommitte on the Handicapped on March 21, is appended to this testimony. I would now be happy to answer questions from members of the subcommittee.

STATEMENT OF

MADELEINE C. WILL

ASSISTANT SECRETARY FOR SPECIAL EDUCATION

AND REHABILITATIVE SERVICES

U.S. DEPARTMENT OF EDUCATION

ON

A REPORT OF THE COMMISSION ON THE EDUCATION

OF THE DEAF

BEFORE THE

SENATE SUBCOMMITTEE ON THE HANDICAPPED

MARCH 21, 1988

Thank you for the opportunity to present the Department of Education's comments on the Report to the President and the Congress of the United States by the Commission on Education of the Deaf entitled: Toward Equality: Education of the Deaf.

The Department has followed the Commission's work very closely and assisted the Commission with its extensive task. The Department commends the members of the Commission for the amount of work done in such a short time. In my brief remarks today, I would like to comment on some of the issues and recommendations set forth in the report by the Commission.

Program Administration

In the area of program administration, I am pleased to announce that the Office of Special Education and Rehabilitative Services has established a unit on Deafness and Communicative Disorders within the Office of the Assistant Secretary. The unit will address policy issues and coordinate service programs to meet the unique needs of children and adults who are deaf or communicatively disabled. It will focus on the rapid advances in such areas as technology, linguistics, psychology and other areas affecting human development. It will also carry out the monitoring and evaluation responsibilities mandated to the Department under P.L. 99-371, "The Education for the Deaf Act", and house the liaison officer to Gallaudet and NTID.

Evaluation and Oversight of Gallaudet University, National Technical Institute for the Deaf, and the Regional Postsecondary Programs

The Department welcomes the Commission's recommendation in regard to the evaluation and oversight of Gallaudet University, the National Technical Institute for the Deaf, and the Regional Postsecondary Education Programs. The Department has begun plans to conduct a systematic evaluation of Gallaudet University followed by evaluations of the National Technical Institute of the Deaf (NTID) and the Postsecondary Education Programs.

In order to prepare for the first study, the Department plans to consult with a team of experts to develop guidelines for conducting evaluations of these complex and specialized institutions of higher education. This is an important first step because any evaluation must be credible to professionals in the field of deafness, to the Congress, and to other parties. The Department expects the guidelines to be completed in fiscal year 1988. The full study of Gallaudet should begin shortly thereafter.

Research

Regarding research, the Commission recommends the establishment of a National Center on Deafness Research within Gallaudet University which would be managed by the University. The present Federal funding level for research would be maintained, but a significant portion of it would be awarded competitively by Gallaudet University to other qualified research organizations.

The Department cannot support these recommendations. The Department agrees with the Commission's draft recommendation, that is, to have Congress provide to Gallaudet University and the National Technical Institute for the Deaf a base-level line item for research, development and evaluation. The remaining research funds should be made available on a competitive basis and administered by the Federal government.

It must be pointed out that Gallaudet University has always successfully competed for special support from discretionary grant programs of the Federal government. The Federal government has already established peer review procedures which ensure fair and open competition utilizing experts in the field to review applications.

Appropriate Education

The Commission addresses the issues of appropriate education and least restrictive environment for the deaf and states that in developing the individual education plan (IEP), consideration should be given to such factors as severity of hearing loss and the potential for using residual hearing; academic level and learning style; communicative needs and the preferred mode of communication; linguistic, cultural, social, and emotional needs; placement preference; individual motivation; and family support.

The Department endorses the concept that each of these factors should be considered in designing IEP's. However, we would like to stress that the educational needs of the child are the principle concern of the IEP committee, and, to the extent that these factors affect the educational needs of any child with handicaps, including one who is deaf, the factors should be taken into account. Current Federal policy does not need to be modified to achieve this objective.

The Commission recommends that the Department should refocus the least restrictive environment concept by emphasizing appropriateness over the least restrictive environment. The Department believes that such an approach would be incorrect and encourages a balanced approach which emphasizes appropriateness in the least restrictive environment.

The Department agrees that placement decisions can properly be made only in the context of a decision on what constitutes appropriate education for each particular child. Properly designed IEPs define the educational goals and services for each child based on the child's unique needs. Placement decisions must be based on the IEP. Consequently, the child is to be placed in an educational setting in which the appropriate education specified in the IEP can be delivered. Our most recent child count show that over 75 percent of deaf and hearing-impaired children aged 3-21 are being served in intergrated placements. The challenge, and our goal, is to ensure that every student receives appropriate education and related services to meet their individual needs.

Standards

The Commission, in several of its recommendations, expresses the need for program standards or for standards for the qualifications of personnel working with deaf students to be developed by the Federal government. The Department believes that determination of educational standards properly should be entrusted to States and professional organizations concerned with setting program or personnel qualification standards and, therefore, objects to the recommendation to give this responsibility to the Federal government.

In accordance with the Commission's recommendation on the need to develop standards, the Unit on Deafness and Communication Disorders has assisted in the establishment of a parent task force to develop suggested guidelines recommending minimal standards in public schools serving hearing-impaired students. The group has a number of professionals assisting in the task. We expect that the guidelines will recommend standards in the following areas:

- standards for identification of hearing-impaired infants
- standards for educational programs for hearing-impaired students
- quality indicators for programs serving hearing-impaired students
- certification standards for professionals working with hearing impaired students in the classroom

As you can see, the new unit on Deafness and Communicative Disorders is already considering many of the issues identified in the report of the Commission on the Education of the Deaf. The Department is convinced that the activities of this new unit will raise the quality of education, not only for children who are hearing-impaired or communicatively disabled, but for all children with special needs.

I would like to request permission to submit for the record a more detailed response to specific recommendations of the Commission. However, I will be happy to respond to any specific questions the Committee may have at this time.

Mr. **Owens**. Madam Secretary, as a transition question, would you comment for a minute on the fact that the Commission on the Education of the Deaf was most concerned with the problem of what they call the confusion in interpretation around the directive of the least restrictive environment versus the least restrictive appropriate environment?

Will there be any steps taken soon to clarify this? Is it an ideological or philosophical problem that is in the way here, or are there ways it could be clarified so there is less confusion?

Mrs. **Will**. Well, I can give you our interpretation of the statute which we think is pretty straightforward based on the language in the statute, and it is that you have a team of people at the State and local level who make a determination based on input from experts, and, certainly, parents play a very significant role in that deliberation. A decision is made about what constitutes a good educational program and an appropriate educational program for the child.

Then, there is an attempt or should be an attempt to try to find the least restrictive environment in which that program can be delivered.

The two steps are intertwined. You don't isolate one from the other. It is sort of like putting two pieces of a puzzle together.

The standard is providing the best educational services in the least restrictive environment possible, and there should be a range of options from which parents and other choose. It is also the case that the program that is finally settled upon should be specifically refined and tailored to meet the needs of the individual child.

Mr. **Owens**. Do you think the deaf students could encounter a particular kind of problem in this process, special problems in this process?

Mr. **Bellamy**. If I could just add a couple of comments to it, one of the things that stands out very strongly in the Commission report is a concern for the quality of what students with deafness receive when they go to school. The report makes many suggestions that recommend that we attend to quality and appropriateness.

One of the concerns that the Department expressed about the report in its formative stages was it implied that there was necessarily a conflict between that and the concept of least restrictive environment. The statute essentially is fairly clear, saying that the program for any individual child in special education will be planned around that particular child's needs and appropriate to that individual.

Then, as Mrs. Will stated, the second aspect of the statute says that we would remove someone from the regular education environment only if necessary to achieve the goals that were set for that individual child.

There is no necessary conflict between those concepts. I think it is fair to say that there is an absolute commitment to ensuring the excellence in quality of education for people with deafness consistent with the report of the Commission.

Mr. **Owens**. In your evaluation and monitoring, do you make a judgment that mainstreaming in the case of the deaf, for example, is closer to least restrictive?

Mrs. WILL. Well, to go back to your earlier question about the deaf encountering more problems, that implies or I think your question implies that the least restrictive environment is a static thing, that it is one place. It is not.

The least restrictive environment is not necessarily the regular class for a student. It is not necessarily the regular school. It can be a separate class or a separate school.

That is what I mean about a deliberation that refines both the placement and the program to the needs of the individual student, but there is a bias in the statute that says we need to try to deliver the services in the least restrictive environment possible, and we know from our research and our demonstrations that it is possible to do that for all the different categories of children with handicapping conditions, including the deaf.

We have a sense of what the best practices are and what those need to look like, and it is a matter of improving State systems.

Mr. OWENS. You say there is nothing in your administration or interpretation of the regulations which pressure groups to define appropriate in terms of mainstreaming—pressure always to see mainstreaming as being the first most appropriate setting?

Mrs. WILL. No, sir. Our standards do not do that. We say that—we use the language of the statute which indicates that the least restrictive environment is the preferable placement, but, as I say, that is not a fixed concept. The second part of the equation has to be meeting the needs of the individual child.

Mr. OWENS. Well, you are aware of the fact that they consider the waters to be considerably muddied?

Mrs. WILL. I understand that.

Mr. OWENS. If it is so clear, why is there so much difficulty, in your opinion?

Mrs. WILL. Because I think there is an attempt on the part of some people to say that the least restrictive environment is, in and of itself, not a good placement for a deaf youngster. We don't think the act says that, and I don't believe that that is the case, in fact.

Deaf students can be and are being served very nicely in least restrictive placements all across this country. We visit programs and know about them and know about the features of those programs that involve the necessary supports for delivering the services, interpreter training and other forms of support that are required in order to deliver appropriate education.

We need to raise the awareness on the part of parents and administrators and professionals about what those features are, what the components of a good educational program are for a deaf youngster in the least restrictive environment.

Tom, anything else?

Mr. BELLAMY. If I could add maybe just one item, the statute makes it fairly clear that what happens to an individual child is decided by a team of people at the local level. It does not give us in the Federal Government the authority to prescribe placements of any kind. It sets up a structure for decision making.

In a sense, the best way to imagine this process is that you have a team of people who are most knowledgeable about an individual child who are asked to decide what it is exactly that would represent a good educational program for this individual. The second question that follows that is, do we have to remove that individual from the regular education environment and, if so, how far in order to provide what the team believes is a good educational service.

Part of the confusion, of course, or part of the concern relates to a Supreme Court ruling regarding what the standards are that local schools must use in deciding what is an appropriate education. That is not something, obviously, within the Department of Education that we have prerogatives over.

Mr. OWENS. Turning to the broader issue of monitoring, Madam Secretary, your testimony claims you have monitored 24 States in the past 3 years. Isn't it true that monitoring isn't completed until a corrective action plan has been implemented? If so, how many corrective action plans has OSERS approved?

Mrs. WILL. The monitoring system is an elaborate one. It is certainly a lengthy process. I agree with the first part of your question, and we have been in the process of developing the monitoring system these past several years in sort of incremental stages.

We are just now beginning to reach the point where we are finalizing the CAP's, but I would hasten to say that we don't regard the finalization of the CAP as the beginning of the correction period. We have worked with States, and many of them have voluntarily begun to change their system even before we finished the final report let alone gotten to the corrective action plan.

So, we think we have a very good working relationship with States in terms of collaborating and developing of the corrective actions that are necessary, and then we intend to follow through to provide some technical assistance to help States where that is necessary.

What we have found—I would like to go back for a moment. Several years ago when I first arrived, there was a great deal of criticism about the weaknesses in the monitoring system. I felt that it was very important to put a priority on the development of a monitoring system, and Congress certainly urged that as well.

We think that we are in the process of helping States to build a capacity to do a better job of monitoring, because one of our consistent findings has been that there are weaknesses in the State monitoring systems. However, to bring those on line overnight is a difficult task.

It requires on the part of States developing policies and procedures where there really almost wasn't a basis of standards against which to measure the locals. The States are in the process of doing this now, and we are very pleased with the results of the monitoring system that have led to the changes in policy and procedures.

We are watching the States develop the ability to monitor, and we are very confident and optimistic that, as we move further down through the process looking more closely at implementation that we will see even greater changes at the local level.

Mr. OWENS. So, how many corrective actions plans has OSERS approved?

Mrs. WILL. Tom?

Mr. BELLAMY. Let me provide the data on the entire process, if I may.

Mr. **Owens**. I just want to know the number of corrective action plans you have approved.

Mr. **Bellamy**. Of the entire plans that are approved, there are none. There are several individual——

Mr. **Owens**. You have not approved any corrective action plans?

Mr. **Bellamy**. There are several individual corrective actions that have been approved and implemented.

Mr. **Owens**. But you have not approved any corrective action plans?

Mr. **Bellamy**. We have approved one corrective action plan in part. We have not approved all of the prescribed corrective actions from any single State.

Mr. **Owens**. Madam Secretary, has a philosophical or political decision been made to leave the States on their own to really do what they want to do? There are several indications that there seems to be no serious monitoring effort, no Federal presence out there to protect rights. When you say you have only done one corrective action plan, it sort of adds to that.

Are you fully staffed in the monitoring area? I understand the system is fully developed for monitoring. You are not in the process of still developing a system. You have a system, but is it fully staffed?

Mrs. **Will**. It is not fully developed, and I will let Tom talk a little bit more about what the process is, but I guess I am somewhat chagrined to hear that there is a concern that there is not a monitoring presence at the State and local level and that there are not activities underway in that regard.

If you look at the range of findings, over 15 significant major areas of compliance have been examined in the past several years involving 28 States. I think that the record is a very good one.

I guess what I would ask of the people who are expressing these concerns is, what is it, what issues should we be looking at that we are not looking at, because we are certainly finding——

Mr. **Owens**. Can you rephrase that? What actions should you be taking that you are not taking?

Mrs. **Will**. Yes, and I——

Mr. **Owens**. Corrective actions.

Mrs. **Will**. But I would further ask you about the universe of individuals and groups that you have sampled to come up with this conclusion that there are dire problems with the monitoring system. There are lots of parent groups, and there are State directors that we deal with.

Tom has created a task force that involves a large number of representatives of parent, consumer, and professional groups who have been working with us for a very long time, giving us on-going advice as to how to improve the monitoring system and to refine it. We feel very comfortable with what we have done thus far.

Mr. **Bellamy**. Mr. Chairman, if I may, let me describe the development of the monitoring system and some of the critical issues that I think get at the concerns you are raising.

In my somewhat less than two years as director of the office, I have had as a primary priority from the Assistant Secretary the development of this monitoring system in a way that we would implement a system that was considered fair by the States and thorough by the advocates and that was within the capacity of our organization.

Many of the questions that you raise essentially get at decisions that I made related to which aspect of the monitoring system to focus on in development. As you know, we don't have the luxury in the bureaucracy of simply stopping monitoring while we develop a new system. The issues that you raise were exactly the issues that led the Assistant Secretary to developing a new monitoring system in 1985 and 1986.

You can imagine our system really in a series of three phases. The first phase leads up to the issuance of a draft report. That involves an on-site visit——

Mr. **Owens**. Dr. Bellamy, we need not waste time on this. I am aware of the nature of the system.

Mr. **Bellamy**. Okay.

Mr. **Owens**. I am concerned about the effectiveness of the system and the end product. You said you have only approved one corrective action plan.

Mr. **Bellamy**. Then let me address your issue specifically.

As we have worked with States between the draft and the final report, we have found a number of States which have moved so quickly to address every issue that we have identified that we have extensively footnoted the final reports that we sent to States noting that the things that we had identified as problems had already been corrected by the time the final report had been issued.

We see that as a success, not a failure in the monitoring effort, but——

Mr. **Owens**. Let me ask you about one specific case. California was reviewed twice in the last 7 years. The same deficiencies were found each time.

As of this date, California still has no final report which means that over this period of time, over $.5 billion in Federal funds have been awarded to a State in the face of clear evidence of non-compliance.

How do you justify this continued awarding of Federal funds and the lack of any action, or is this information also incorrect?

Mr. **Bellamy**. I don't have information concerning that——

Mr. **Owens**. On California?

Mr. **Bellamy**. I would be very happy to provide information in writing concerning the earlier review of California. The current review is near completion. I expect that the final report will be mailed within a week.

Mr. **Owens**. This has been going on for 7 years. Do we agree on that?

Mr. **Bellamy**. I would be happy——

Mr. **Owens**. It has been reviewed twice in the last 7 years. Is that not a fact, or do you contest that fact?

Mr. **Bellamy**. I have data here that describes the most recent review.

Mr. **Owens**. And you didn't find the same deficiencies each time you reviewed it?

Mr. **Bellamy**. As I said, I will be happy to provide that comparison in writing. I have the data from the most recent review here.

Mr. Owens. Well, give us your conclusions at this point. What is the situation with respect to California? Where are you in your monitoring process?

Mr. Bellamy. Where we are in our monitoring process is, as I mentioned, within the week we will be issuing the final report to the State.

Mr. Owens. California?

Mr. Bellamy. That is right.

Mr. Owens. Thank you.

[The information to be supplied follows:]

In response to the House Subcommittee on Select Education request for further information on OSEP's 1980 and 1988 California monitoring reports, please find set forth below a comparison of findings contained in these reports.

OSEP'S 1988 CALIFORNIA MONITORING REPORT: IDENTIFIED FINDINGS OF DEFICIENCY	REPORTED IN 1980 REPORT	
	YES	NO
§I.1 California's Department of Education (CDE) did not have supervisory authority over each public agency providing related services (e.g., physical therapy (PT), occupational therapy (OT), and mental health services) to handicapped children in California to ensure that each child is provided with a free appropriate public education (FAPE). Pg2	X	
§I.2.A CDE did not ensure that handicapped children were removed from the regular education environment only when more restrictive placements were educationally justified. Pg4	X	
§I.2.B CDE did not ensure that the placement of handicapped children in special education programs was based on their individualized education programs (IEP) and not on the basis of the category of their handicapping condition or the current current administrative configuration of services. Pg6	X	
§I.2.C CDE did not ensure that the provision of extra curricular and nonacademic services to handicapped children was in the least restrictive environment (LRE). Pg7		X
§I.4 CDE did not ensure that IEPs contained needed related services (e.g., PT and OT). Pg10		X
§I.5 CDE did not ensure that its child counts are accurate. Pg11		X
§II.A CDE failed to implement an effective system of monitoring because it failed to correct the deficiencies identified by OSEP (see §I) and because it could not identify public agency compliance with a large set of Federal requirements. Pg12	X	
§II.B CDE did not take appropriate enforcement action to ensure correction of deficiencies it does identify when monitoring public agencies. Pg15	X	

OSEP'S 1988 CALIFORNIA MONITORING REPORT: IDENTIFIED FINDINGS OF DEFICIENCY	REPORTED IN 1980 REPORT YES	NO
§III.A CDE did not ensure that it only approved local educational agency (LEA) applications for EHA-B funds that met Federal requirements. Pg17		X
§III.B CDE did not ensure that changes in LEA plans met Federal requirements. Pg18		X
§IV.A CDE did not ensure that public agencies retained the records needed to demonstrate compliance with Federal requirements. Pg18		X
§IV.B CDE did not have an adequate system to ensure a sufficient number of qualified personnel were available to meet the needs of handicapped children. Pg19		X

Mr. **Owens**. Mr. Bartlett?

Mr. **Bartlett**. Thank you, Mr. Chairman.

By way of comment, I guess I never heard of anyone accuse Tom Bellamy and Madeleine Will of not being tough enough on States, but here is a first.

Mr. **Owens**. It was not an accusation; it was a question.

Mr. **Bartlett**. Duly noted, Mr. Chairman.

It does seem to me that what is important for this subcommittee to focus on and what I think you could provide us either right now or additionally is the goal which is to change behavior in the classroom. I mean, the goal is to provide an appropriate public education in the least restrictive environment to every student.

That goal is better accomplished by assisting States and persuading them to accomplish that goal than it is the issuance of reports. So, if what you are telling us is that many of those items found to be in non-compliance are quickly corrected by the States, it seems to me that that does achieve the goal.

Can you give us any kind of quantification of that number of some of the States that you have monitored and how many of the issues have been resolved before the issuance of the final report or during the course of it, or do you have any kind of an approximation?

Mr. **Bellamy**. I would rather do it accurately in writing. I know personally of three reports in which we have extensively footnoted corrections that had already been made prior to issuance of the final report.

Mr. **Bartlett**. In your opinion, will you be able to footnote each of the changes that the States had made prior to the issuance of the final report?

Mr. **Bellamy**. That is a practice that we have had at the request of the State director of special education or the chief State school officer in the State. Often, we have known that the practice had already been corrected but did not make specific reference to that in the final report when the correction occurred between the draft and the final. So, our practice has not been entirely consistent in giving States credit in writing for having done it. It simply shows up in the next step of the process as the corrective action is proposed.

Mr. **Bartlett**. And what then happens when you find a State out of compliance in specific instances? What happens next if, in fact, you are not able to resolve it before the issuance of the report?

Mrs. **Will**. Well, I would have to say we feel that we work very well with the States. If a State refuses to implement a corrective action plan, we have to move to terminate the funds.

That has not happened in the past that we have had such hostile dealings with States. Mostly, as Tom says, they are extremely eager to implement corrective actions and are beginning to do that before the final report is issued.

Mr. **Bartlett**. Do you negotiate compliance between the State and the Feds and do you do that in public or in private or in some combination?

Mrs. **Will**. We don't negotiate corrective action. We do give the States an opportunity to send in more data if they feel that there are misunderstandings concerning questions of facts or we talk to them by phone or in person to clarify the factual statements that are made in the report, but we don't negotiate corrective actions with them.

Mr. **Bartlett**. Dr. Bellamy, I would hope at some point you would discuss—don't call it negotiate if you don't want to—what the State has to do to comply both verbally and in writing. These are often complicated problems and complicated solutions, and sometimes the solution has been found by another State just recently, and it becomes your job what that range of options is.

So, how would you describe, once the findings are determined and the State is told of its problems or during the process, how would you describe the communication between the State and OSEP?

Mr. **Bellamy**. Our monitoring system is established with a practice that allows the State to comment on a draft report for a period of 30 days. We have had a practice of allowing States to extend that for a period of time.

That time period is normally used specifically for a State to correct factual problems that might have existed in the report. Obviously, it is difficult for a staff in a short visit within a State to analyze all of the information that might be available concerning the State's administration of special education programs, and we feel it is reasonable to provide the State an opportunity to correct problems of fact that we have in the report.

At that time, a final report is issued. That final report prescribes corrective actions.

Since the State has had that advance notice, they do have the opportunity to be in a situation in their own State of saying at the time that a final report comes out that they have already made the corrections that were necessary.

That is followed by each of the corrective actions essentially asking the State to address particular findings where we have identified discrepancies between the State's administrative practice and the regulations. Each one of those particular corrective actions has its own time line.

The corrective action plan that the chairman referred to earlier is simply a device that we use that provides a point of comment on the specific corrective actions that a State might take.

The fact is that the corrective actions themselves are already prescribed in the final report, and they have a time line at that point. We did build in the corrective action plan as a way for us to review the activities that the States——

Mr. **Bartlett**. When you say the corrective actions, you mean the solutions to the——

Mr. **Bellamy**. That is right, the solutions. The corrective actions themselves are prescribed in the final report that the States receive.

Mr. **Bartlett**. So, the final report then also prescribes the solutions.

Mr. **Bellamy**. That is correct.

Mr. **Bartlett**. I am still not certain I understand the answer. At that point you have discussed the solutions with the State, or have you not?

The right answer is yes, you have, but I am not sure what the real answer is. [Laughter.]

Mr. **Bellamy**. The level of discussion that we have had with States has varied over the course of the process. Remember, this is a system that is in development.

We have made every effort to identify, even in the early analysis stages, to identify ways that the State feels are reasonable to address problems that we have identified. In other States, we have actually sat down, reviewed corrective actions to determine whether or not those actions are feasible within the State's particular administrative structure, if we have allowed the correct amount of time for States to do it.

When States have submitted corrective action plans, they have offered alternative time lines or alternative strategies that would meet the same objectives.

Mr. **Bartlett**. Well, one final comment, and you may wish to respond to it as a question.

First, it seems to me from the States and the parents that I have talked with that in fact the monitoring program has achieved some substantial success. Nothing is perfect, and as the Secretary said in her testimony, there are some improvements that still need to be made.

However, the goal of the monitoring program is not to shut of education of the handicapped money. The goal of the monitoring program is to ensure both compliance with the law—but let me take that back. That is not even the goal. The goal is ultimately to provide education to the student, and we believe that can happen by assuring compliance with the law.

At every step in the process, the places in which the monitoring program has worked most successfully is when there has been a maximum of communication. Some States tell me that after the draft report is drafted and sent back to the State, they find surprises in it, and that is the bad news. There shouldn't be any surprises. The on-site visit should have already discussed areas that seem to be in non-compliance on the surface.

The good news is the State then has the opportunity for the final report to bring additional information to bear, to discover what could be done about those non-compliance items, and to discuss it. And that level of communication is excellent.

Another level of communication has to extend all the way through to the parents and the teachers and others so that we all listen and learn from one another. Therefore, that communication has to be, as much as is possible, of a non-adversarial nature.

One of the things I think we do well is we start off the process with a parent meeting, and that is very helpful. One of the suggestions that I would have would be to communicate back with the parents during the process in terms of those items that the State has correct, has begun to correct, and then communicate back with the parents as to what the monitoring process has done and what problems have been corrected so the parents are not left in the dark.

Secretary Will, do you wish to respond?

Mrs. **Will**. That is a recommendation that has been made to us, and it is one we are considering. We received another recommendation that we are acting upon, however, which is to schedule the parent meeting earlier to give more notice to the individuals who might be interested in attending that meeting but also then to give our team more time to incorporate and target issues that have been raised in the parent meeting when they actually go on-site.

I want to underscore something you said that was very important about the purpose of the monitoring system not to ensure compliance at the local level. There are 16,000 school districts. We could never ensure compliance on the part of 16,000 school districts. In fact, the act doesn't give us the authority to do that.

It says that the State educational agency shall be responsible for assuring that the requirements of this part, that is, Part B, are carried out and that all educational programs for handicapped children with a State will be under the general supervision of the persons responsible for educational programs for handicapped children. That is a common misunderstanding, I think, on the part of people out there.

Another common misunderstanding is that OSERS has the authority to directly investigate individual complaints. We do not have that authority. That rests with OCR, and there are administrative mechanisms in place at the State level. OCR has the ability to investigate an individual complaint.

We have the due process system at the State level.

Mr. **Bartlett**. The Office of Civil Rights is within the Department of Education.

Mrs. **Will**. Yes, it is.

Mr. **Bartlett**. So, you have some association with it.

Mrs. **Will**. We do, indeed, but the Office of Special Education and Rehabilitative Services and Tom's division of monitors do not have the authority to investigate them.

Mr. **Bartlett**. Are you in the same building?

Mrs. **Will**. Yes, sir.

Mr. **Bartlett**. On the same floor?

Mrs. **Will**. Yes, sir.

Mr. **Bartlett**. Couldn't you just walk down the hall and ask them?

Mrs. **Will**. Yes, sir, we do.

Mr. **Bartlett**. I hope you do.

Dr. Bellamy?

Mr. **Bellamy**. If I could follow up just a moment on your communication point which I thought was an excellent one and describe some things that we started this year.

For the first time that I know of, at least, we began a process that involves an annual review of this entire monitoring system by a group that includes representatives of all of the major constituencies that are affected by monitoring. We sat down over a two-day period with representatives of the State special education directors, parent groups, advocacy organizations, local special ed directors, and others that had some investment in the way that we monitored.

We reviewed an entire list of recommendations about how the system might evolve with a commitment to making gradual, incremental and useful change each year as that group sits down and meets. I think we have a process in place that will lead us to systematic consideration of the kinds of suggestions you were making.

In fact, each one of your ideas, I am happy to say, were on the table for discussion when that group met last summer, and I am sure will be there again when we meet again this summer, but we do have a process in place that involves a lot of people in the design of how we do this.

We clearly have some issues that we are still working on in developing the system. I would have to say that the first stage of the system involved getting the process really in place to get a final report out. We spent much of this year making sure that we can move successfully from the draft report to the final report in a successful way, and we expect to spend exactly that same kind of energy as we move into the next phase working with the corrective actions and corrective action plans.

However, we are developing the system in an incremental and, I believe, reasonable and logical way.

Mr. **Bartlett**. Mr. Chairman, there are at least a dozen other issues that we could discuss, and I won't have any additional questions, but one additional area that does deserve some comment is in the area of transition from school to work.

It seems to me that we are still struggling with the answer. We are beginning to get the question down pretty well. Some 50 percent of high school students with disabilities graduate from high school and don't graduate into a world of work. That is both unacceptably high for the lives of those individual young adults as well as high in cost to the Federal and State taxpayers.

That seems to me to be the next step that we have to unlock. Now, we did in prior authorization create a program of transition. I read your testimony and hear you today saying we have not really resolved what to do about that.

I might suggest, Mr. Chairman, that it might be the focus of a future hearing. We always give short shrift to transition, and I know, Madam Secretary, that is not your intention and it is not mine, either, but perhaps we could have one hearing and one report from the Department just in the area of transition.

It is not a matter of more money, it seems to me, although there may be some additional required, and it is not a matter of some new law. It is really a matter of removing those barriers to employment that, unfortunately, still exist, and they exist at all levels of government.

So, that that comment, Mr. Chairman, I will yield back.

Mr. **Owens**. I take it the Department is agreeable to such a hearing?

Mrs. **Will**. Yes, sir.

Mr. **Owens**. We shall move forward to prepare for it.

Thank you again. We would like to receive in writing the material that you offered, Dr. Bellamy, especially the material relating to the California case. I would be interested in that, and we would be interested in seeing the refinements and adjustments in your monitoring system. We would be interested in seeing any additional material you have on that.

Thank you again.

[The material referred to follows:]

FINAL

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAY 16 1987

Honorable Francis Hatanaka
Superintendent of Education
Post Office Box 2360
Honolulu, Hawaii 98604

Dear Superintendent Hatanaka:

This letter is to provide you and your special education staff with the final results of the Compliance review conducted by the Office of Special Education Programs (OSEP), U.S. Department of Education. A copy of our report "Office of Special Education Programs Compliance Monitoring Report: 1985-1986 Review of the Hawaii State Department of Education," is enclosed.

First, I want to acknowledge the hard work and helpful assistance provided by your special education staff while assisting OSEP's compliance team in preparing for and conducting its September 1985 site visit. The team was impressed with your staff's professionalism and dedication to special education programs in Hawaii.

What follows is a brief summary of OSEP's review process. Beginning in July 1985, the compliance team of Ray Miner, Dave Rostetter, Lonnie Stewart and Dawn Hunter initiated a review of the Hawaii State Plan and addenda, previous OSEP monitoring reports, and OSEP policy letters sent to Hawaii. Concurrently, OSEP requested and received for review from the Hawaii State Department of Education (HASDE) its policies and procedures and documentation of implementation of the responsibilities set forth in the regulations for Part B of the Education of the Handicapped Act (EHA-B) and the Education Department's General Administrative Regulations (EDGAR). A copy of this information was retained by HASDE.

In addition, the OSEP team studied material from the U.S. Department of Education's Office for Civil Rights, Office of the Inspector General, Office for Vocational Education, the U.S. Department of Justice and the Administration on Children, Youth and Families. All relevant information was reviewed for evidence of HASDE's compliance with applicable statutory and regulatory requirements.

During the week of September 16, 1985, while on site, the OSEP team conducted meetings and interviews with Mr. Miles Kawatachi and his staff in the Special Education offices. The OSEP team collected additional documents while on site. It also interviewed staff and reviewed student files at the Waimano Training School, Pohukaina School, Jefferson School, Kaimuki High School, Olomana Youth Corrections Facility, Hawaii School for the Deaf and Blind, and McKinley High School.

400 MARYLAND AVE. S.W. WASHINGTON, D.C. 20202

On the evening of September 16th, a public meeting was held to provide an opportunity for interested persons to present statements regarding HASDE's implementation of its State and Federal responsibilities in special education.

Based upon the information received and analyzed by OSEP, determinations were made concerning whether HASDE met all applicable requirements. The attached Report does not discuss all the issues analyzed by OSEP but sets findings only in those areas where corrective actions are necessary. The findings are organized in accord with the major areas of responsibilities established by the EHA-B and EDGAR regulations.

Upon receipt of the Report, HASDE will be required to submit to OSEP, within 60 calendar days, a corrective action plan (CAP) that conforms to the corrective actions ordered in OSEP's Report. If not otherwise specified in OSEP's Report, HASDE's CAP must delineate the activities needed to comply with the required corrective actions, the persons responsible for implementing those activities, the timelines for completing those activities, and the specific documentation to be submitted to OSEP that will verify progress and completion of each activity. In those identified instances where the magnitude of the necessary corrective actions so justify, HASDE is accorded the flexibility to establish its own timelines, subject to OSEP's approval.

Please be advised that our staff is available for technical assistance during any phase of the development or implementation of your CAP.

Thank you for your continued cooperation in working to achieve quality education programs for children who are handicapped.

Sincerely,

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Enclosure: OSEP Report

OFFICE OF SPECIAL EDUCATION PROGRAMS
COMPREHENSIVE MONITORING REPORT:

1985-86 REVIEW OF THE HAWAII STATE DEPARTMENT OF EDUCATION

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OFFICE OF SPECIAL EDUCATION PROGRAMS COMPLIANCE MONITORING REPORT:

1985-1986 REVIEW OF THE HAWAII STATE DEPARTMENT OF EDUCATION

This Report contains the results of the compliance review conducted by the Office of Special Education Programs (OSEP), U.S. Department of Education, of the Hawaii State Department of Education (HASDE) for compliance with certain Federal statutes and regulations that require State educational agencies (SEA) to carry out responsibilities regarding the administration and delivery of programs for handicapped children. Set forth below are specific legal responsibilities, OSEP's determinations of noncompliance, OSEP's findings of fact, and a statement of the corrective actions needed to bring HASDE into compliance. Where appropriate, OSEP provides its reason(s) for making certain factual findings in support of its determinations of noncompliance.

(NOTE: There are no local educational agencies (LEAs) in the State of Hawaii. Thus, HASDE functions as both an SEA and an LEA in the administration of programs for handicapped children in the State. While Hawaii therefore differs from other States, part of HASDE's overall role carries with it the responsibilities for complying with the Federal monitoring requirements applicable to other SEAs receiving funds under Part B of the Education of the Handicapped Act (EHA-B).)

I. STATE EDUCATIONAL AGENCY MONITORING

A. HASDE is responsible for the adoption and use of proper methods for "[the] monitoring of agencies, institutions, and organizations responsible for carrying out" special education programs in the State of Hawaii, including any obligations imposed on those agencies, institutions, and organizations under law. 34 CFR §76.101(e)(3); see also 34 CFR §300.556.*/

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*/ This responsibility must be implemented in conjunction with HASDE's omnibus responsibility to ensure that all applicable State and Federal requirements for special education programs are carried out. See 34 CFR §300.600.

> A proper method for monitoring program compliance should involve the collection and analysis of information sufficient to identify any deficiency by HASDE in providing services to handicapped children within the State. "Deficiencies" are the failure to comply with applicable State or Federal program operation requirements.

Based upon the facts set forth below, OSEP finds that HASDE has neither adopted nor put into use monitoring procedures sufficient to identify each deficiency in the administration of special education programs within the State.

- HASDE has no procedures for collecting or analyzing information sufficient to identify HASDE's failure to comply with each of the legal requirements established at:

> 34 CFR 300.342(b) [IEP: effective date]; 300.344(a)(2),(3) [participants in IEP meetings: teacher and parents]; 300.345(a)-(d) [Notice to parents of IEP meetings]; 300.380(b) [Procedures to ensure that special education personnel are qualified]; 300.504(a) [Prior notice of initiation or change of educational placement]; 300.504(b) [Parental consent for pre-placement evaluation]; 300.505(a)(1) [full explanation of procedural safeguards available to parents]; 300.514(b) [Duty to assign Surrogate Parents]; 300.534(b) [Timing of reevaluations]; 34 C.F.R. 300.550 [Least restrictive environment, (LRE) in general]; and 34 CFR 300.552(a)(2) [LRE placement in accordance with IEP].

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires that HASDE undertake the following corrective actions:

1. HASDE must adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, specific procedures for determining whether each education program for children with handicaps administered within the State of Hawaii meets HASDE standards (as amended pursuant to each corrective action contained within this Report), as well as EHA-B and EDGAR requirements.[1] In particular, HASDE's revised method of monitoring must include:

   a) written procedures which ensure the collection and analysis of information sufficient for identifying deficiencies in each of the areas of responsibility listed under the above findings;

   b) the description of each action HASDE will take to correct identified deficiencies and achieve future compliance;

   c) sufficient documentation to verify the initiation and completion of those actions needed to assure correction of current deficiencies and prevention of future ones;

   d) the timeframe for achieving future compliance; and

   e) a revision of monitoring instruments to monitor compliance with student evaluation requirements.

2. HASDE must submit to OSEP, prior to implementing its revised procedures, written assurances that each HASDE staff person responsible for implementing these new procedures has received inservice training on their proper implementation.

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[1] Applicable Federal requirements provide that recipients of EHA-B funds ensure that programs for handicapped children administered within the State must conform to State standards as well as EHA-B and EDGAR requirements. 34 CFR §300.600(a)(ii) (State educational agency responsibility that programs for handicapped children meet State standards); 34 C.F.R. §300.4(b) (defining FAPE as special education and related services which meets State standards). Thus, in sec. III(B) of this Report, at page 5, OSEP notes HASDE's responsibility to ensure that personnel necessary to carry out the purpose of EHA-B are qualified to provide special education and related services in accordance with certification standards approved by HASDE.

II. COMPLAINT MANAGEMENT

HASDE is responsible for the adoption and use of procedures for receiving and resolving any complaint stating that the State or any public agency receiving EHA-B funds is violating a Federal statute or regulation applicable to special education programs in the State. 34 CFR §§76.780-782.

Based upon a review of HASDE documents and interviews with responsible HASDE officials, OSEP finds that HASDE has not adopted or put into use procedures for receiving and resolving written complaints alleging violations of applicable Federal requirements.

Corrective Actions

Since the monitoring visit conducted by OSEP, HASDE has submitted documentation which demonstrated that this deficiency was corrected.

III. GENERAL SUPERVISION

A. HASDE is responsible for ensuring that each educational program for handicapped children administered within the State, including each program administered by any other public agency is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and meets education standards of the State educational agency. 34 CFR §300.600(a)(2)

Based upon the facts set forth below, OSEP finds that HASDE does not ensure that the educational program for handicapped children at the Waimano State School, a residential facility administered by the Hawaii State Department of Health, is under the general supervision of the persons responsible for educational programs for handicapped children in HASDE, and meets education standards as required by 34 CFR §300.600(a)(2)

A review of 27 student records at the Waimano State School, and interviews with professional staff indicated that:

- Students were not receiving special education and related services as prescribed in their IEPs. For example:
    - One student, whose IEP prescribed 17.5 hours of special education instruction per week received only 3 hours of instruction per week; and
    - Students did not receive a related service, such as physical therapy or recreational therapy, as prescribed in their IEPs (evidence found in 4 of 27 student records reviewed by OSEP).
- Students receive less than the six hours of educational instruction per day required by HASDE education standards, without documentation that the reduced school day was required for educational or medical reasons. (Evidence in 5 of 27 students records reviewed by OSEP).

B. HASDE is responsible for the adoption and use of procedures to ensure that personnel necessary to carry out the purposes of EHA-B in all schools throughout the State are "qualified", as that term is defined in 34 CFR §300.12, to provide special education and related services in accordance with certification standards approved by HASDE. 34 CFR §300.380(b).

Based upon the facts set forth below, OSEP finds that HASDE has failed to adopt or put into use procedures which ensure that personnel necessary to carry out the purposes of EHA-B in all schools throughout the State are "qualified" to provide special education and related services in accordance with HASDE certification standards.

A review of relevant documents revealed that personnel at the Waimano State School, who were providing special education and related services to handicapped children, were not certified to provide such services in accordance with standards approved by HASDE.

Corrective Actions

Since the monitoring visit conducted by OSEP, HASDE has submitted documentation which revealed that these deficiencies were corrected.

IV. LEAST RESTRICTIVE ENVIRONMENT

HASDE is responsible for the adoption and use of procedures that meet the Federal requirements for educating handicapped children in the least restrictive environment (LRE). 34 CFR §300.550(a). Set forth below are specific LRE requirements with which HASDE is responsible for ensuring compliance:

A. HASDE is responsible for ensuring that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped. In addition, HASDE is responsible for ensuring that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.550(b).

Based upon the facts set forth below, OSEP finds that HASDE has neither established nor implemented procedures which ensure that the removal of handicapped children from the regular educational environment is justified on the basis that the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Therefore, HASDE has not fulfilled its responsibility to ensure that handicapped children be educated in the regular school environment unless removal can be justified.

- Handicapped children placed in the Waimano State School are not educated with nonhandicapped children during the regular school day.*/ (Evidence found in 27 of the 27 student records reviewed by OSEP at Waimano.)

*/ The OSEP Monitoring Team finds that HASDE has made progress in implementing procedures to ensure that placements of handicapped children are made in accordance with Federal LRE requirements. In contrast to the situation at Waimano State School, HASDE has implemented procedures to ensure that the children placed at the Jefferson State School and Hawaii School for the Deaf and Blind have opportunities to interact with nonhandicapped peers through participation in community-based training programs during the regular school day.

* 22 of the 40 student records reviewed contained no indication that the placement of handicapped children in the more restrictive setting was necessary because the children were unable to achieve satisfactorily in the regular educational environment.

* 22 of the 40 student records reviewed did not show that, prior to placing handicapped children in a more restrictive educational setting, HASDE considered altering or made any effort to alter the method of delivery of educational services (e.g., by providing supplementary aids and services) or modify the types and intensity of services (e.g., by reassigning appropriate staff) so that handicapped children can be educated satisfactorily in regular educational environments.

B. HASDE is responsible for ensuring that each handicapped child's educational placement is based upon an individualized education program (IEP). 34 CFR §300.552(a)(2).

OSEP finds that, while HASDE has written policies and procedures designed to fulfill the responsibilities cited above, HASDE does not make educational placements for handicapped children on a uniform basis or in accordance with appropriately developed IEPs; in some instances, placement decisions were made on the basis of the category of the child's handicapping condition. Therefore, HASDE has not met its responsibility to ensure that educational placements are based upon completed IEPs and in accordance with Federal regulations.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires that HASDE undertake the following corrective actions:

1. HASDE must submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, procedures which ensure the following:

a) that to the maximum extent appropriate, handicapped children are educated with nonhandicapped children;

b) that handicapped children are not removed from the regular educational setting without valid written justification that the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

c) that all placement determinations are made on a uniform basis and only after a valid IEP has been completed for each child; and

d) that placement determinations not be made on the basis of the category of a child's handicapping condition.

2. In addition, HASDE must amend the HASDE State Plan with the newly adopted LRE policies and procedures.

3. HASDE must submit to OSEP, within 120 calendar days of OSEP's approval of HASDE's amended LRE policies and procedures, a written assurance that each responsible public and private agency has adopted policies and procedures that ensure compliance with HASDE's amended LRE policies and procedures and that each agency has taken all appropriate steps to implement immediately those policies and procedures.

4. HASDE must submit to OSEP for its approval, within 60 calendar days from receipt of this Report, copies of the materials to be used for providing technical assistance to and the training of appropriate personnel on how to implement their LRE responsibilities; included in this submission HASDE must provide a detailed plan for ensuring their respective LRE responsibilities.

V. PROCEDURAL SAFEGUARDS

HASDE is responsible for establishing and implementing procedures which ensure that the requirements of 34 CFR §§300.500-514 are met. Specifically, HASDE is responsible for ensuring that the requirements of 34 CFR §§300.504-505 and the requirements of 300.514 are met.

Based upon the facts set forth below, OSEP finds that while HASDE has established written policies and procedures, HASDE has failed to implement procedures which ensure that the requirements of 34 CFR §§300.504-505 and §300.514 are met.

- A review of student records revealed that prior notice was not provided to parents prior to initiating or changing the educational placement of a handicapped child (evidence found in 8 student records reviewed by OSEP).

- Student records contained no documentation that the prior notice given to parents of a handicapped child prior to the child's preplacement evaluation or initial placement in a special education program included a full explanation of all procedural safeguards available to parents are required by 34 CFR §300.505(a)(1).

* Parental consent was not obtained prior to a preplacement evaluation or initial placement of a handicapped child in a special education program (evidence found in 18 student records reviewed by OSEP).

* Interviews with responsible personnel and a review of relevant documents revealed that Hawaii Department of Health did not ensure that individuals assigned as surrogate parents to children at the Waimano State School were appointed as required by 34 CFR §300.514(c)(2)(i) and (d)(1). It appears that individuals assigned as surrogate parents for handicapped children at Waimano State School were employees of the Waimano State School, and may have had a conflict of interest with the children they were assigned to represent.

Corrective Actions

In order to ensure correction of the above stated findings of deficiency, OSEP requires HASDE to undertake the following corrective actions.

HASDE must submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, a plan that must include the following:

a) the development of training materials for administrators and parents to inform parents of procedural safeguards in connection with a preplacement evaluation or initial placement of a handicapped child in a special education program as required by Federal law;

b) timelines for development and implementation by HASDE, of procedures for the training of administrators and parents;

c) the notification to parents, during the next school year, of their rights and responsibilities prior to the conduct of evaluations, initial placements or change in placements initiated by HASDE; and

d) a procedure which documents that parents are given the appropriate parent notice and when the notice is given.

VI. STUDENT EVALUATION

A. HASDE is responsible for the adoption and use of evaluation procedures as set forth in 34 CFR §§300.530-534 for all handicapped children throughout the State.

Based upon the facts set forth below, OSEP finds that HASDE has not adopted or put into use procedures to ensure that the Federal requirements for evaluation of handicapped children, as set forth in 34 CFR §§300.530-534, are met.

- A review of student records revealed that tests were administered in English to students whose native languages were Cantonese, Filipino, and Samoan (evidence found in 4 student records reviewed by OSEP).

- IEPs were written before student evaluations were conducted (evidence found in 5 student records reviewed by OSEP).

- Student reevaluations were not conducted within the required 3 year time period (evidence found in 5 student records reviewed by OSEP).

Corrective Actions

Subsequent to OSEP's compliance visit in September 1985, HASDE has submitted documentation which reveals the correction of the identified deficiencies.

VII. INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

A. HASDE is responsible for ensuring that each public agency initiates and conducts meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program (IEP). 34 C.F.R. §300.343(a). In addition, HASDE is responsible for ensuring that such meetings are conducted with the participation of the parents and the teacher of the handicapped child and that other methods are used to obtain parents participation when neither parent can attend. 34 C.F.R. §300.344-345.

Based upon the facts set forth below, OSEP finds that HASDE has failed to ensure that IEPs for handicapped children are not being developed at IEP meetings which include the child's teacher and the parents or that other methods are used to obtain parent participation when neither parent can attend the IEP meeting as required by 34 C.F.R. §300.343-345.

- HASDE's policy that IEPs be developed, reviewed, and revised at meetings conducted and supervised by personnel responsible for the provision of FAPE to each handicapped child for whom they are responsible has not been implemented; for example:

° The Waimano State School has conducted meetings for handicapped children without the participation of parents and without documenting the attempts made through oral and written communications, to obtain the parents participation, when neither parent can attend (evidence found in 25 of the 27 student records reviewed by OSEP at Waimano).

° HASDE makes placement determinations for handicapped children which are based on IEPs that are not developed in accordance with Federal requirements; for example:

° IEP meetings were conducted where the child's teacher was not present (evidence found in 10 of the 27 student records reviewed by OSEP at Waimano).

° IEPs were written before IEP meetings and student evaluations were conducted (evidence found in 5 of the 40 student records reviewed by OSEP).

Corrective Actions

Subsequent to OSEP's compliance visit in September, 1985, HASDE has submitted documentation which revealed that the deficiencies have been corrected.

*** END OF REPORT ***

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP 25 1987

Honorable Ruth S. Steele
Director
Department of Education
State Education Building A, Room 304
Little Rock, Arkansas 72201

Dear Dr. Steele:

This letter is to provide you and your staff in the Division of Special Education with the results of the Compliance Review conducted by the Office of Special Education Programs (OSEP), U.S. Department of Education. A copy of our report "Office of Special Education Programs Comprehensive Monitoring Report: 1986 Review of the Arkansas State Department of Education" is enclosed.

First, I want to acknowledge the hard work and helpful assistance provided by your special education staff while assisting OSEP's compliance team in preparing for and conducting this review. The team was impressed with your staff's professionalism and dedication to programs for students with handicaps in Arkansas.

Based on the information collected and analyzed during OSEP's Compliance Review, determinations were made concerning whether the Arkansas State Department of Education (ARKDE) met the requirements applicable to the areas of responsibility identified in the Report's Table of Contents. The attached Report does not discuss all the issues analyzed by OSEP but sets forth only those findings and determinations of noncompliance where corrective actions are necessary. As the Report is now final, ARKDE is required to submit to OSEP within 60 calendar days a corrective action plan (CAP) that specifies what actions it will take to implement the corrective actions contained in OSEP's Report, what resources will be committed to ensure completion of those actions, which personnel will be assigned responsibility for completion of each action specified in the plan, what timelines will be adhered to for completing each specified action, and the specific documentation that will be submitted to OSEP verifying completion of each action.

The Report identifies a number of concerns that may require ARKDE to revise existing regulations, policies and procedures; consequently, ARKDE will be expected to amend its State Plan to reflect the changes required by this Report. ARKDE's amended State Plan must be submitted prior to its next application for EHA-B funds and must be adopted in accordance with applicable Federal regulations.

In response to a request from the ARKDE Associate Director for Special Education, OSEP previewed preliminary corrective actions submitted by ARKDE. Asterisks have been placed next to those corrective action requirements in the report that OSEP has determined have been satisfied through steps recently taken by ARKDE. ARKDE is to be commended for fine effort in this regard. Those corrective action requirements which OSEP has determined have not yet been satisfied do not have an asterisk next to them in the report; further corrective actions are necessary for these items.

Office of Special Education Programs staff is available for technical assistance during any phase of the development or implementation of your CAP. Please let me know if we can be of assistance.

Thank you for your continued cooperation in working to achieve quality education programs for children with handicaps.

Sincerely,

G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Enclosure: Review Process
OSEP Reports

cc: Dr. Diane Sydoriak

REVIEW PROCESS

ARKANSAS STATE DEPARTMENT OF EDUCATION

What follows is a brief summary of the Office of Special Education Programs' (OSEP) review process. Beginning in October 1985, the compliance team of Barbara Route, Sheila Friedman, Jim Greene, and Bill Hillman initiated a review of the Arkansas State Plan and addenda and previous OSEP monitoring reports and policy letters sent to Arkansas. Concurrently, OSEP requested and received for review from the Arkansas State Department of Education (ARKDE) its policies and procedures and documentation of implementation of the responsibilities set forth in the regulations for Part B of the Education of the Handicapped Act (EHA-B) and the Education Department General Administrative Regulations (EDGAR).

In addition, the OSEP team studied material from the U.S. Department of Education's Office for Civil Rights, Office of the Inspector General, Office of Vocational and Adult Education, the U.S. Department of Justice, and the Administration on Children, Youth and Families. All relevant information we reviewed for evidence of ARKDE's compliance with applicable statutory and regulatory requirements.

In January, 1986, ARKDE staff met in Washington with the OSEP team to discuss preliminary questions and plan the on-site visit.

During the week of January 20, 1986, while on site, the OSEP team conducted meetings and interviews with the following members of your staff: Dr. Diane Sydoriak, Mrs. Marcia Harding, Mr. Russell Brown, and Mr. John Dukes. The OSEP team collected additional documents while on site. The monitoring team also interviewed staff and reviewed student records at the Baring Cross School, Florence Mattison School, Fair High School, Warren Human Development Center, and Arkadelphia Human Development Center.

On the evening of January 21, 1986, a public meeting was held to provide an opportunity for interested persons to present statements regarding ARKDE's implementation of its State and Federal responsibilities in special education.

A draft monitoring report was issued on October 24, 1986, and subsequently ARKDE submitted to OSEP a written response to the draft report. The Director of Special Education of ARKDE met with OSEP and discussed the compliance findings. ARKDE submitted additional documentation for OSEP to consider in making the final compliance determinations.

Based on all of the information collected and analyzed during OSEP's Comprehensive Compliance Review, the following compliance determinations are issued.

OFFICE OF SPECIAL EDUCATION PROGRAMS COMPREHENSIVE MONITORING REPORT:
1986 REVIEW OF THE ARKANSAS STATE DEPARTMENT OF EDUCATION

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OFFICE OF SPECIAL EDUCATION PROGRAMS
COMPREHENSIVE MONITORING REPORT:

1986 REVIEW OF THE ARKANSAS STATE DEPARTMENT OF EDUCATION

This report contains the results of the Comprehensive Compliance Review conducted by the Office of Special Education Programs (OSEP), U.S. Department of Education, of the Arkansas State Department of Education (ARKDE) for compliance with certain Federal statutes and regulations that require State educational agencies (SEAs) to carry out responsibilities regarding the administration and delivery of programs for children with handicaps. Set forth below are specific legal responsibilities, OSEP's findings of fact, the evidence in support of each finding and a statement of the corrective actions needed to bring ARKDE into compliance. Where appropriate, OSEP provides its reasons for making certain factual findings in support of its determination of noncompliance.

I. STATE EDUCATIONAL AGENCY MONITORING

A. ARKDE is responsible for the adoption and use of proper methods for the monitoring of agencies, institutions, and organizations responsible for carrying out special education programs in the State of Arkansas including any obligations imposed on those agencies, institutions, and organizations under law. 34 CFR §§76.81, 76.772(a)(3)*.

A proper method for monitoring program compliance should involve the collection and analysis of information sufficient to identify any deficiency by a subgrantee or other agency providing services to handicapped children within the State. A "deficiency" is the failure to comply with any applicable State or Federal program operation requirement.

Based upon the facts set forth below, OSEP finds that ARKDE has not adopted or implemented monitoring procedures sufficient to identify each deficiency in the administration of special education programs within the State.

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* The responsibilities must be implemented in conjunction with ARKDE's omnibus responsibility to ensure that all applicable State and Federal requirements for special education programs are carried out. See 34 CFR §300.600.

- ARKDE has no procedure for collecting or analyzing information sufficient to identify a responsible agency's failure to comply with each of the legal requirements established at:

> 34 CFR *§300.302 [Residential placement]; *300.303 [Hearing aids]; 300.304 [Full educational opportunity goal]; *300.305 [Program options]; *300.307 [Physical education]; *300.341 (b)(2) [State educational agency responsibility for IEPs for handicapped children in parochial or other private schools]; *300.343 [IEP meetings]; 300.348 [Public agency responsibility for IEPs for handicapped children in parochial or other private schools]; *300.400-402 [Handicapped children placed in or referred to private school by a public agency]; 300.503 [Independent educational evaluation]; 300.504 [Prior notice; parent consent]; 303.505 [Content of notice]; *300.533 [Placement procedures]; 300.541 [Criteria for determining the existence of a specific learning disability]; 300.543 [Evaluation: written report]; *300.550 [LRE: general]; *300.552 [Placements]; 300.553 [Non-academic settings]; 300.556 [LRE monitoring]; 300.562 [Access rights]; *300.564 [Records on more than one child]; *300.566 [Fees]; *300.567 [Amendment of records at parents' request]; 300.568 [Opportunity for a hearing]; *300.569 [Result of hearing]; *300.572 [Safeguards]; *300.573 [Children's rights]; 300.600 [Responsibility for all educational programs]; 34 CFR *§99.4 [Transfer of rights]; 34 CFR *§76.650-662 [Participation of students enrolled in private schools]; *76.683 [Health or safety standards for facilities]; *76.700 [Compliance with statutes, regulations, State plan and responsibilities of each project application]; 76.701 [State or subgrantee responsible for administering or supervising each project]; *76.731 [Records related to compliance]; and *76.734 [Retention of records related to compliance].

- ARKDE has no policies or procedures for collecting and reviewing information relevant to compliance determinations otherwise available to it (e.g., complaint documentation, hearings and court decisions, evaluation and performance reports) in order to determine if deficiencies are present.

B. ARKDE is responsible for the adoption and use of proper methods for the correction of deficiencies in program operations that are identified through monitoring. 34 CFR §76.101(e)(3); see also 34 CFR §§76.772(2)(4) and 300.556(b)(2).

Based upon the facts set forth below, OSEP finds that ARKDE has not adopted procedures to ensure that program deficiencies identified through monitoring are corrected.

- ARKDE has not ensured the correction of deficiencies identified through ARKDE's monitoring activities of the educational programs for children with handicaps at two human development centers administered by the Arkansas Department of Human Services.

- ARKDE has not identified or corrected deficiencies found in ARKDE monitoring of programs for children with handicaps within the State, in the educational programs for children with handicaps at the Warren HDC and the Arkadelphia HDC. Specifically, ARKDE found, but did not correct the fact that, local educational agency staff does not participate in decisions with respect to initial placements of children with handicaps at the Warren HDC, as required by 34 CFR 300.347, or in annual determinations of educational placements as required by 34 CFR §300.552(a)(1) and 34 CFR §300.533(a)(3), (4).

- ARKDE has not adopted procedures for providing public agencies with a written description of the criteria for appropriate corrective actions that must be taken to redress identified deficiencies. As a result, ARKDE reports do not specify the types of actions to be taken or the outcomes to be produced through corrective action. In addition, ARKDE reports do not specify timelines for the correction of identified deficiencies in program operations, for which ARKDE should require corrective actions. The reports make non-binding recommendations, rather than requiring corrective actions.

- ARKDE does not have a proper method which ensures that proposed corrective action plans received from public agencies appropriately address the identified deficiencies, in part because ARKDE does not specify the types of actions it believes are necessary.

- ARKDE's monitoring procedures do not include a mechanism for following up on the implementation of corrective action plans.

C. ARKDE is responsible for the adoption and use of proper methods for the enforcement of any obligations imposed upon responsible agencies, institutions, and organizations under law. 34 CFR §76.101(e)(3).

Based upon the facts set forth below, OSEP finds that ARKDE has not adopted adequate procedures for enforcing obligations imposed upon responsible agencies that refuse to comply with corrective orders issued by ARKDE, and has not implemented its existing enforcement authority in a way that ensures that responsible agencies comply with ARKDE corrective actions.

* ARKDE does not provide local educational agencies (LEAs), with identified deficiencies, with an opportunity to challenge ARKDE's findings of deficiency in a fair hearing, as required by 34 CFR §300.194(a).

* ARKDE does not notify LEAs with identified deficiencies of what enforcement consequences will result from an LEA's failure to exercise hearing rights or failure to cease and redress all identified deficiencies within a reasonable period of time.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following actions.

1. ARKDE must submit to OSEP for its approval, within 60 calendar days from receipt of this Report, a plan for revising its method of monitoring program compliance. The plan must provide for ARKDE's establishment and implementation of written procedures for determining that each education program for children with handicaps administered within the State meets ARKDE's educational standards, and EHA-B and EDGAR requirements; in particular, these procedures must include provision for:

    a. identifying deficiencies in each of the areas of responsibility listed under findings in §I.A above; and

* b. monitoring the implementation of any compliance agreement or corrective order resulting form the resolution of complaints, due process hearings and administrative reviews.

2. ARKDE must adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, specific procedures for including in each finding of deficiency a detailed description of corrective actions that public agencies must take to redress each identified deficiency. ARKDE procedures must require that, where a public agency receives a finding of deficiency, that agency must submit to ARKDE a corrective action plan that provides for:

* a. the elimination of each identified deficiency and the elimination of any past effect that reasonably can be identified and corrected;

* b. specific steps to be taken to prevent the recurrence of each identified deficiency;

* c. the description of each action the agency will take to correct identified deficiencies and achieve future compliance, including adequate inservice training, where appropriate;

* d. sufficient documentation to verify that each required action has been instituted and that the intended results have been achieved; and

* e. the timelines for achieving full compliance.

3. ARKDE must submit to OSEP, within 120 calendar days of implementing its revised monitoring and corrective action procedures, a sample of monitoring reports issued pursuant to those procedures which includes one report covering an LEA, one a State supported program and one a State operated program. A complete copy of ARKDE's monitoring file must accompany each report.

* 4. ARKDE must submit to OSEP, within 90 calendar days of ARKDE's first request for a corrective action plan pursuant to ARKDE's revised procedures, a copy of ARKDE's notice of deficiency and the approved plan; in addition, ARKDE must ensure OSEP, in writing, that the recipient's approved plan was completed satisfactorily.

5. ARKDE must review each notice of deficiency issued to public agencies within the last three years to ensure that each identified deficiency has been corrected and to take appropriate corrective action wherever compliance cannot be documented. ARKDE's must submit to OSEP, within 180 calendar days from OSEP's approval of ARKDE's revised procedures, written assurances from each LEA that all outstanding deficiencies have been corrected, that a CAP is being implemented to correct their deficiencies, or ARKDE's written assurance that it has initiated enforcement action against noncompliant agencies.

6. ARKDE must adopt and submit along with its other monitoring procedures, written procedures for enforcing against each responsible agency all uncorrected identified deficiencies.

ARKDE must implement these procedures immediately upon OSEP's approval. These procedures shall, at a minimum, address the following concerns:

* a. the notification of all affected agencies of their right to a fair hearing for the purpose of challenging an ARKDE notice of deficiency or required corrective action;

* b. the sanctions that will be imposed for failure to correct an identified deficiency; and

* c. the time periods in which these sanctions will be imposed.

* 7. ARKDE must submit to OSEP written assurance that each ARKDE staff person responsible for implementing each new procedure listed above has received inservice training and the dates on which the training was conducted. This training must be provided prior to ARKDE's implementation of its revised procedures.

II. LEA APPLICATIONS

A. ARKDE is obligated to disapprove any local educational agency (LEA) application for EHA-B funds if that application does not meet the requirements of the Federal statutes and regulations that apply to a special education program. 34 CFR §76.400(d)

Based upon a review of relevant documents, OSEP finds that ARKDE fails to comply with its responsibility to assure that all LEA applications for EHA-B funds meet all the requirements of Federal statutes and regulations. A review of 14 LEA applications by the OSEP monitoring team revealed that ARKDE routinely approves LEA applications that fail to comply with one or more of the legal requirements established at: 34 CFR §§300.223 [Facilities, personnel and services]; 300.226 [Parent involvement; 300.227 [Participation in regular education programs]; 300.340-349 [Individualized Education Programs]; 300.500-514 [Procedural safeguards]; 300.530-534 [Protection in evaluation procedures]; and 300.550-556 [Least Restrictive Environment].

B. ARKDE is responsible for assuring that any significant amendment to an LEA application for EHA-B funds shall be made by using the same procedures as those that must be used in submitting an initial application. 34 CFR §76.305.

Based upon a review of documents and after interviewing responsible ARKDE personnel, OSEP finds that ARKDE has no written procedures for determining whether an LEA's application for EHA-B funds complies with the same procedures as used in submitting an initial application.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions:

1. ARKDE must amend its LEA Application Guide to include the procedures and the reviewing instrument(s) it will use in reviewing applications for EHA-B funds. These amendments must specify the following:

   * a) who will review applications for EHA-B funds;

   * b) when LEA applications will be reviewed, including the timelines that will be followed during the review process;

   * c) each requirement of applicable State and Federal law that must be met before an application can be approved; and

   * d) how adverse due process decisions and prior decisions to withhold funds from the applicant will affect an applicant's eligibility for EHA-B funds.

* 2. ARKDE must amend its LEA Application Guide to include the procedures it will use to determine whether an application for EHA-B funds has been significantly amended and what procedures an applicant must follow to make a significant amendment.

3. ARKDE must adopt and submit to OSEP for approval:

   * a) within 60 calendar days from receipt of this Report, all the amendments to its LEA Application Guide as mandated by corrective action numbers 1-2 immediately above; and

   * b) within 180 calendar days from receipt of this Report, all the amendments to its State Plan and State regulations mandated by corrective action numbers 1-2 above.

* 4. ARKDE must disseminate a copy of its amended LEA Application Guide to all recipients of EHA-B funds within the State, within 10 calendar days of OSEP's approval. ARKDE must thereafter implement the procedures contained in the LEA Application Guide, as amended.

* 5. ARKDE must submit to OSEP written assurance that each LEA application for EHA-B funds approved during the next normally scheduled cycle complies with ARKDE's revised LEA Application Guide. This assurance must be submitted within 10 calendar days of each approval.

* 6. ARKDE must submit to OSEP written verification that all ARKDE personnel responsible for implementing these new procedures have received inservice training and the dates on which the training was conducted. This training must be provided prior to ARKDE's review of amended LEA applications.

III. COMPLAINT MANAGEMENT

ARKDE is responsible for the adoption and use of written procedures for receiving and resolving any complaint stating that the State or any public agency receiving EHA-B funds is violating a Federal statute or regulation applicable to special education programs in the State. These procedures must provide that ARKDE will conduct independent on-site investigations, when necessary, and that complaints will be resolved within 60 calendar days after their receipt, unless exceptional circumstances justify an extension of the timeline. 34 CFR §§76.780-76.782.

Based upon the facts set forth below, OSEP finds that ARKDE has not adopted or put into use written procedures for managing complaints in a manner consistent with its responsibility as established by EDGAR. See 34 CFR §§76.780-76.782.

- ARKDE's policies and procedures do not contain the following:
  - Procedures for conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary;
  - Procedures which provide for the resolution of a complaint 60 calendar days from the date of receipt, unless exceptional circumstances justify an extension of the timelines;
  - Written procedures requiring notification to parties of the right to request that the Secretary of the U.S. Department of Education review the final decision of the State.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions.

1. ARKDE must amend and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, its written procedures for the management of complaints alleging violation of Federal statutes or regulations applicable to ARKDE's administration of special education programs. Specifically, the amended procedures must provide for the following:

   * a) an independent on-site investigation of a complaint when determined to be necessary;

   * b) the resolution of a complaint within 60 days from the date of receipt unless extenuating circumstances justify an extension of the time period.

   * c) review of an appeal from a decision of a subgrantee with respect to a complaint;

   * d) right to request the Secretary of the U.S. Department of Education to review the final decision of the State.

* 2. ARKDE must disseminate the amended procedures to all LEAs within 10 calendar days of approval by OSEP and must instruct LEAs to inform parents of students with handicaps of these procedures each time parents are notified of their procedural safeguards.

* 3. ARKDE must submit to OSEP, within 30 calendar days of OSEP approval of the amended procedures, written verification that it has obtained written assurances from each LEA that it will notify parents, as instructed by ARKDE.

IV. GENERAL SUPERVISION

A. ARKDE is responsible for ensuring that each educational program for children with handicaps administered within the State, including each program administered by any other public agency meets the educational standards of ARKDE and the requirements of EHA-B. 34 CFR §300.600 (a)(2). See also 34 CFR §300.4.

Based upon the facts set forth below, OSEP finds that ARKDE has not fully met its general supervisory responsibility, as set forth in 34 CFR §300.600(a)(2), over educational programs for children with handicaps at two human development centers (HDCs) administered by the Arkansas Department of Human Services.

° According to a review of students records and interviews with responsible personnel, it appears that students with handicaps at the Warren HDC receive one hour of special education instruction during a school day. This amount of special education instruction is less than the five hour and 30 minute requirement for a school day prescribed by the ARKDE Education Standards for Accreditation. See also 34 CFR §300.4(b) (Free Appropriate Public Education) which defines FAPE as special educational and related services which meet the standards of the State educational agency.

° A review of 53 student records did not reveal any documentation of a medical or educational justification for providing a lesser amount of special education instruction than required by standards of ARKDE.

B. ARKDE is responsible for assuring that it and other recipients of EHA-B funds retain for a period of no less that five years all records needed to fully show compliance with applicable program and administrative requirements. 34 CFR §§76.730, 76.731, and 76.734. See also 34 CFR §300.130(a).

Based upon the facts set forth below, OSEP finds that ARKDE cannot assure that pubic agencies retain the records needed to demonstrate compliance with applicable program and administrative requirements.

° ARKDE has no policy or procedure for requiring the retention of records needed to demonstrate compliance with applicable program and administrative requirements by it or other recipients of EHA-B funds.

° ARKDE did not maintain copies of working papers for monitoring reports as required by 34 CFR §76.101(e)(ii) and 34 CFR §76.732.

° The IEPs of the handicapped children enrolled in the Baring Cross School were retained for three years, rather than for five years, as required by 34 CFR §76.734. See also 34 CFR §300.130(a).°

° A review of student records revealed that IEPs of students with handicaps placed at the Warren and Arkadelphia HDCs were not retained by the HDCs prior to the school year 1983-84.

C. ARKDE is responsible for the adoption and use of a proper method for disseminating, throughout the State, information on special education programs' requirements and successful practices. 34 CFR §76.734. See also 34 CFR 300.130(a).*

Based upon the facts set forth below, OSEP finds that ARKDE has not adopted or put into use a proper method for disseminating to responsible agencies and interested persons information on special education requirements and successful practices. Although ARKDE has disseminated information on the requirements of EHA-B to certain public agencies in the State of Arkansas, ARKDE has failed to adopt policies and procedures to ensure the dissemination of information on the requirements of EHA-B to all public agencies in the State of Arkansas.

* ARKDE has adopted but has failed to distribute policies and procedures on least restrictive environment (LRE) requirements to private schools and other service agencies. 34 CFR §300.555.

D. ARKDE is responsible for assuring that each responsible agency adopts and uses an appropriate method for coordinating the administration of special education programs and projects within its jurisdiction. 34 CFR §76.580 and §76.581.

Based upon a review of relevant documents, OSEP finds that ARKDE has not developed policies and procedures that specify that ARKDE and other responsible agencies are required to coordinate each of their projects with other activities in the same geographic area served by the project or serving similar purposes and target groups. Therefore, OSEP finds that ARKDE cannot assure that it or any responsible agency that administers special education programs within the State has either adopted or put into use an appropriate method for coordinating the administration of relevant programs and projects within its jurisdiction.

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*/ Under the requirements of EHA-B and EDGAR, ARKDE is required to ensure that public agencies within the State retain records of IEPs of children with handicaps for five years. Since IEPs are "records" relating to "compliance with program requirements," used in 34 CFR §76.732, public agencies must retain completed IEPs of children with handicaps for a five year period, as required by 34 CFR §76.734. Although nothing in EHA-B requires the retention of IEPs for more than 5 years, it would be permissible for ARKDE to require public agencies to retain IEPs for a longer period of time for educational reasons.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions:

1. ARKDE must adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, written policies and procedures to assure compliance with the following Federal requirements:

   * a. that all educational programs for handicapped children administered within the State meet standards of the State and EHA-B requirements as required by 34 CFR §300.600(a)(ii);

   * b. that recipients of EHA-B funds retain for five years any record needed to fully show compliance with applicable program and administrative requirements as required by 34 CFR §76.734;

   * c. that all responsible education agencies be informed of successful special education practices, that all responsible agencies be informed of how to comply with all State and Federal special education program requirements;

   * d. that responsible agencies, to the extent possible, coordinate each of their special education programs with other activities within their jurisdiction that serve similar purpose and target groups by use of at least one appropriate method of coordination as required by 34 CFR §76.581.

* 2. For each newly adopted policy or procedure requiring that training be instituted or that a disclosure be made, ARKDE must submit to OSEP for its approval, a plan for implementing the training initiative (specifying dates, material, and invited attendees) and the text of the required disclosure.

3. ARKDE must submit to OSEP, within 180 calendar days from receipt of this Report, written assurance and adequate documentation demonstrating that ARKDE and other responsible agencies have done each activity required by the newly adopted policies and procedures referenced above.

V. PROCEDURAL SAFEGUARDS

> ARKDE is responsible for ensuring that it and other public agencies within the State establish and implement procedures which ensure that the requirements of 34 CFR §§300.500-514 are met, specifically the requirements at 34 CFR §300.510(c); 34 CFR §300.508(a)(5), and 34 CFR §300.514.

Based upon the facts set forth below, OSEP finds that ARKDE has not ensured that it and public agencies within the State establish and implement procedures which ensure that the requirements of 34 CFR §§300.500-514 are met, specifically the requirements at 34 CFR §300.510(c), 34 CFR §300.508(a)(5), and 34 CFR §300.514.

- ARKDE has failed to establish or implement procedures which ensure that decisions of administrative hearings are final unless appealed by an aggrieved party, as required by 34 CFR §300.510(c).

- ARKDE has not established or implemented procedures which ensure that findings and decisions from hearing proceedings are transmitted directly to the State advisory panel, as required by 34 CFR §300.508(a)(5).

- Children with handicaps placed at the Warren HDC and the Arkadelphia HDC have not been assigned surrogate parents to represent them in all matters related to the provision of a free appropriate public education, as required by 34 CFR §300.514.

Corrective Actions

In order to ensure correction of the above stated findings of deficiency, ARKDE is required to take the following corrective actions.

1. ARKDE must adopt and submit to OSEP for its approval within 60 calendar days from receipt of this Report, and implement immediately upon approval, policies and procedures to ensure that:

   * a. the decisions of the administrative hearings are final unless appealed by an aggrieved party; and

   * b. the findings and decisions from hearing proceedings will be transmitted directly to the State advisory panel.

2. ARKDE must adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, procedures ensuring that public agencies within the State establish and implement procedures for the assignment of surrogate parents to represent children with handicaps in matters relating to the provision of a free appropriate public education as required by 34 CFR §76.730.

VI. ADMINISTRATION OF FUNDS

A. ARKDE is responsible for approving, on an annual basis, all requests made by an LEA for use of an indirect cost rate in accordance with applicable cost accounting procedures. 34 CFR §§76.560-76.563.

Although ARKDE does not approve the indirect cost rate for each LEA on an annual basis, ARKDE has no written policies and procedures for determining these rates. Because ARKDE cannot assure that the rates it approves are either accurate or reasonable, OSEP finds that ARKDE does not meet the standard of accountability required for the approval of indirect cost rates, as set forth at 34 CFR §§76.560-76.563.

B. If, in any fiscal year an LEA does not submit an application for EHA-B funds that meets Federal requirements and/or is unable or unwilling to be consolidated with other LEAs in order to establish and maintain compliant programs, ARKDE is responsible for assuring that: (1) EHA-B funds will not be distributed to that LEA, and (2) EHA-B funds are used directly to provide a free appropriate public education (FAPE) to children with handicaps residing in the area served by that LEA. 34 CFR §300.360(a).

Based upon a review of relevant documents and interviews with responsible ARKDE personnel, OSEP finds that ARKDE has no written policies and procedures for assuring, nor can ARKDE assure that, the requirements cited immediately above are being met.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions.

* ARKDE must amend its LEA Application Guide and Monitoring Manual to incorporate relevant policies and procedures adopted in response to the corrective actions set forth immediately above and meet all the relevant timeframes, documentation, and other corrective action requirements set forth under §§I-II of this Report.

VII. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)

ARKDE is responsible for conducting an annual needs assessment to determine whether a sufficient number of qualified personnel are available in the State and for initiating in-service personnel development programs based on the assessed needs of State-wide significance related to the implementation of EHA-B. 34 CFR §§300.126; 300.382(b); 300.380(c).

Based on a review of ARKDE's policies and procedures, OSEP finds that ARKDE does not include State agencies in its procedures for development, review, and annual updating of the Comprehensive System of Personnel Development. In addition, OSEP finds that ARKDE's policies and procedures do not provide for determining the in-service needs for specific groups in specific areas, i.e., special teachers, regular teachers, administrators, psychologists, speech and language pathologists, audiologists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, classroom aides, and surrogate parents, in such areas as IEP, non-biased assessment, LRE, and procedural safeguards.

° ARKDE's policies and procedures do not contain the following:

  ° criteria for entering into a contract with institutions of higher education, LEAs, or other agencies, to carry out experimental or innovative personnel development programs, 34 CFR §300.382(d) & (e)(6);

  ° procedures for the development and conduct of in-service training programs, including: the use of incentives to ensure participation by teachers; involvement of local staff. and the use of effective and innovative ways of conducting the training, 34 CFR §300.382 (e)(1)(2)&(3);

  ° Procedures used in evaluating the effectiveness of the in-service training in meeting the objectives of the CSPD, 34 CFR §300.382 (f)(7);

  ° Procedures for funding CSPD, including methods used in securing the funding, and criteria for selecting the programs for funding, 34 CFR §300.382 (f)(5)(6);

  ° statements and descriptions of ARKDE's responsibility for acquiring, disseminating and adopting, where appropriate, significant and promising educational practices and material developed through educational research, demonstration and similar projects, 34 CFR §300.380(c);

  ° criteria used by ARKDE and public agencies in the determination of what practices and/or materials are to be acquired, disseminated, and adopted, 34 CFR §300.382(d)(3);

  ° procedures for responding to requests for technical assistance, 34 CFR §300.384-385;

- the technical assistance available from ARKDE in the areas of: needs assessment, securing financial support for comprehensive personnel development, location of resource people to conduct in-service personnel development programs, evaluation of personnel development programs, means of identifying and acknowledging the significant and promising educational practices and materials, and adopting, where appropriate, and implementing significant and promising educational practices and materials. 34 CFR §300.397.

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions.

* 1. ARKDE must adopt and submit written procedures which specify the criteria for entering into a contract with institutions of higher education, LEAs, or other agencies to carry out experimental or innovative personnel development programs.

* 2. ARKDE must adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, detailed written procedures and plans for including State agencies in procedures for development, review, and annual updating of teh Comprehensive System of Personnel Development. ARKDE must also include in its policies and procedures provisions for training to meet the in-service needs for specific groups in specific areas.

* 3. ARKDE must adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, amended policies and procedures for the Comprehensive System of Personnel Development. These procedures must incorporate the areas of responsibility as set forth in the findings above.

VIII. PROGRAM EVALUATION

ARKDE is responsible for the adoption and use of procedures to evaluate, at least annually, the effectiveness of programs in meeting the educational needs of handicapped children. 34 CFR §300.146

Based on a review of ARKDE policies and procedures, OSEP finds that ARKDE has neither adopted nor put into use sufficient written procedures for the evaluation, at least annually, of the effectiveness of programs in meeting the educational needs of children with handicaps. While some evaluation procedures exist, ARKDE procedures for the evaluation of programs for children with handicaps do not contain the following:

- statements and descriptions of the purpose of the evaluation or of the way the activity was intended to contribute to the overall goal of program effectiveness;
- procedures for the assignment of responsibility to a specific individual for conducting or coordinating evaluation activities;
- procedures for the selection of, or the identifiable basis for selecting, the numbers and types of programs to be evaluated;
- procedures for the assessment of the time and resources needed to conduct an appropriate evaluation;
- procedures for the use of compliance monitoring information as a data source for evaluation activities; and
- procedures for the exchange of this information with affected agencies, relevant State officials or affected parents in order to facilitate appropriate policy and resource development aimed at the improvement of affected programs.

Corrective Actions

- In order to assure correction of the above stated findings of deficiency, ARKDE is required to adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, written procedures for evaluation, at least annually, of the effectiveness of programs in meeting the educational needs of children with handicaps. These procedures, at a minimum, should incorporate the organizational characteristics identified in the findings of fact set immediately above.

IX. CHILD COUNT

ARKDE is responsible for reporting to the U.S. Department of Education, no later than February 1 of each year, the number of handicapped children aged 3 through 21 residing in the State who are receiving special education and related services. This report must be conducted and submitted in accordance with the applicable Federal requirements. 34 CFR §300.750-754.

Based upon the facts set forth below, OSEP finds that ARKDE does not submit to the U.S. Department of Education child count reports that comply with applicable requirements.

- ARKDE procedures for monitoring public agency counting and verification procedures do not include provisions for:
  - sampling a sufficient number of individual students folders to conclude that each child counted was receiving special education and related services in accordance with a current IEP on the count date;
  - ensuring that each public agency followed State guidelines regarding which children may be counted;
  - investigating the cause of counts in a disability category that appear to be excessively high or low compared to State and national projected incidence figures; and
  - withholding EHA-B funds from any agency that fails to correct deficiencies in conducting the child count.

Corrective Actions

- In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to adopt and submit to OSEP for its approval, within 60 calendar days from receipt of this Report, and implement immediately upon approval, amended policies and procedures for monitoring public agency counting and verification procedures. These procedures must incorporate the four areas of responsibility for monitoring a public agency's child count activities, as set forth in the findings above.

X. INDIVIDUALIZED EDUCATION PROGRAMS

A. ARKDE is responsible for ensuring that public agencies in the State of Arkansas establish and implement procedures to ensure that each handicapped child's individualized education program (IEP) is developed at an appropriate IEP meeting and implemented following the IEP meeting. 34 CFR §§300.343(a); 300.342(b).

Based upon the facts set forth below, OSEP finds that ARKDE has failed to ensure that public agencies establish and implement procedures which ensure that each handicapped child's IEP is developed at the IEP meeting and implemented following the IEP meeting.

° A review of student records at the Baring Cross School revealed that IEPs were developed and implemented up to 5 months prior to the date of the IEP meeting. (Evidence found in 90 of 99 student records reviewed by OSEP).

B. ARKDE is responsible for ensuring that public agencies in the State of Arkansas use other methods to ensure parent participation, such as individual or conference telephone calls, when neither parent can attend the IEP meeting. 34 CFR §300.345(a), (c).

Based upon the facts set forth below, OSEP finds that public agencies in the State of Arkansas do not use other methods, such as individual or conference telephone calls, to ensure parent participation, when neither parent could attend the IEP meeting.

° Student records at the Baring Cross School contained no documentation that other methods, such as individual or conference telephone calls, were used to ensure parent participation when neither parent could attend the IEP meeting. (Evidence found in 6 of 11 student records reviewed by OSEP).

° Student records at the Arkadelphia HDC contained no documentation that other methods, such as individual or conference telephone calls, were used to ensure parent participation when neither parent could attend the IEP meeting. (Evidence found in 6 of 14 student records reviewed by OSEP).

° Student records at the Warren HDC contained no documentation that other methods, such as individual or conference telephone calls, were used to ensure parent participation when neither parent could attend the IEP meeting. (Evidence found in 10 of 13 student records reviewed by OSEP).

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions.

1. ARKDE must submit to OSEP for its approval within 60 calendar days from receipt of this Report, and implement immediately upon approval, procedures which ensure that the North Little Rock School District develops IEPs for children with handicaps at the IEP meeting and implements the IEPs following the IEP meeting.

*2. ARKDE must submit, within 60 calendar days from receipt of this Report, and implement immediately upon approval, procedures to ensure that public agencies in the State of Arkansas use other methods, including individual or conference telephone calls, to afford parents the opportunity to participate when neither parent can attend the IEP meeting.

XI. LEAST RESTRICTIVE ENVIRONMENT

ARKDE is responsible for ensuring that each public agency establishes and implements procedures that meet the Federal requirements for educating handicapped children in the least restrictive environment (LRE). 34 CFR §300.550(a). Set forth below are specific LRE requirements with which ARKDE is responsible for ensuring compliance.

A. ARKDE is responsible for ensuring that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped. In addition, ARKDE is responsible for ensuring that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or the severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 3 CFR §300.550(b).

Based upon the facts set forth below, OSEP finds that some public agencies in the State of Arkansas have either not established or have not implemented procedures to ensure that the removal of children with handicaps from the regular educational environment is justified. Therefore, ARKDE has not fully met its responsibility to ensure that public agencies in the State of Arkansas establish and implement procedures to ensure that children with handicaps be placed in the regular school environment, unless removal can be justified.

- A review of relevant documents revealed that ARKDE has no written procedures to ensure that removal of children with handicaps occurs only when the accomplishment of individualized education program (IEP) goals and objectives in the regular educational environment (with the use of supplementary aids and services) cannot be achieved satisfactorily.

- A review of 53 student records revealed no documentation that removal of children with handicaps was justified on the basis that the nature or severity of the handicap was such that educational placement in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. 34 CFR §300.550(b)(2).

B. ARKDE is responsible for ensuring that public agencies ensure that each handicapped child's educational placement is determined at least annually by a group of persons knowledgeable about placement options. 34 CFR §300.552(a)(1); 34 CFR §300.533(a)(3), (4).

A review of student records of the children with handicaps placed at the Warren HDC and interviews with responsible personnel revealed that educational placement determinations were not made, at least annually, by a group of persons knowledgeable about placement options. Thus, ARKDE has not fully met its responsibility in this area.

C. ARKDE is responsible for ensuring that each handicapped child's educational placement is based upon his or her individualized education program. 34 CFR §300.552(a)(2).

Based upon the facts set forth below, OSEP finds that public agencies in the State of Arkansas do not uniformly place children with handicaps in accordance with their IEPs as required by 34 CFR §300.552(a)(2). Instead, OSEP finds that some public agencies in the State of Arkansas make educational placement decisions on the basis of the category of the child's handicapping condition, for administrative convenience, or prior to the development of the IEP. Therefore, ARKDE has not met its responsibility to ensure that each handicapped child's educational placement is based upon the IEP of the child.

- A review of relevant documents revealed that the North Little Rock School District has no written procedures to ensure that educational placements of children with handicaps are made based on completed IEPs.

- A review of student records revealed that educational placements of children with handicaps at the North Little Rock School District are determined prior to the completion of IEPs. (Evidence found in 90 of 90 student records reviewed by OSEP). 34 CFR §300.552 (a)(2).

- According to professional staff at the North Little Rock School District, placements of the 90 handicapped children at the Baring Cross School were based upon the category of their handicapping condition (i.e., mental retardation).

D. ARKDE is responsible for ensuring that each public agency ensures that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services. 34 CFR §300.551(a).

Based upon the facts set forth below, OSEP finds that some public agencies in the State of Arkansas do not ensure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services. Therefore, ARKDE has not met its responsibility to ensure that public agencies in the State of Arkansas have available a continuum of alternative placements so that each handicapped child's IEP is implemented in the least restrictive environment.

- A review of student records and interviews with responsible personnel at the North Little Rock School District revealed that 100 percent of all children with moderate and severe handicaps were placed in the Baring Cross School, a separate day school. By comparison, a review of student records and interviews with responsible presonnel at the Pulaski County School District revealed that children with moderate and severe handicaps were placed in various educational settings. Thus, the North Little Rock School District does not make available a continuum of alternative placements for children with moderate and severe handicaps.

- Each of the 14 LEA applications reviewed by OSEP revealed that ARKDE approves LEA applications that do not contain policies and procedures which describe the types of alternative placements available to children with handicaps.

E. ARKDE is responsible for ensuring that each public agency ensures that handicapped children participate with non-handicapped children in a non-academic and extracurricular services and activities (including meals, recess periods, and the other activities as set forth in 34 CFR §300.306) to the maximum extent appropriate to the needs of the child. 34 CFR §300.553.

Based on a review of documents and interviews with responsible personnel, OSEP finds that ARKDE has not adopted procedures to ensure that each public agency ensures that children with handicaps participate with non-handicapped children in nonacademic and extracurricular services and activities, to the maximum extent appropriate to the needs of the child.

- A review of 53 student records and interviews with school administrators at the Warren HDC and Arkadelphia HDC revealed that students with handicaps placed at those facilities do not have opportunities for interaction with non-handicapped peers in nonacademic and extracurricular activities, to the maximum extent appropriate to the needs of the children.

- In 36 of 53 students records reviewed by OSEP, there was no evidence that consideration was given to the participation of children with handicaps with non-handicapped children in nonacademic and extracurricular activities.

- Interviews with responsible personnel revealed that none of the 90 children with handicaps at Baring Cross School received any services or participated in any activities with non-handicapped children during the regular school day.

- Interviews with responsible personnel and a review of student records revealed that none of the 31 children with handicaps at the Warren HDC receive any services or participate in any activities with non-handicapped children during the regular school day.

F. ARKDE is responsible for fully informing teachers and administrators about their responsibilities for implementing LRE requirements and for providing the necessary technical assistance and training so that these personnel can implement their LRE responsibilities. 34 CFR §300.555; see also 34 CFR §76.101(e)(3)(ii)(iii).

Based upon the facts set forth below, OSEP finds that ARKDE has not met its responsibility to provide the technical assistance and training needed to ensure that teachers and administrators implement their LRE responsibilities.

- ARKDE's Comprehensive System of Personnel Development contains no materials for training in the area of LRE (e.g., current LRE issues are not identified, staff are not assigned to address LRE issues, training programs are not directed to teachers on parents, and materials are not designed to inform personnel on proper methods for justifying the removal of students from regular educational settings or on proper methods for ensuring the placement of students in the least restrictive environment). In addition, there are no materials for providing technical assistance to public agencies on redesigning service delivery systems for educating handicapped children with non-handicapped children.

- A review of ARKDE documents contain no evidence that ARKDE has identified any promising or innovative educational techniques for serving children with handicaps in the least restrictive environment as required by 34 CFR §76.101(e)(3)(iii).

Corrective Actions

In order to assure correction of the above stated findings of deficiency, OSEP requires ARKDE to undertake the following corrective actions.

1. ARKDE must adopt and submit to OSEP for its approval within 60 calendar days from receipt of this Report, and implement immediately upon approval, detailed procedures for ensuring that public agencies establish and implement within 180 calendar days from receipt of this Report, policies and procedures ensuring the following:

* a. that, to the maximum extent appropriate, children with handicaps are educated with non-handicapped children;

* b. that children with handicaps are not removed from the regular educational setting without valid written justification;

* c. that placements for children with handicaps be determined at least annually by a group of persons knowledgeable about placement options;

* d. that all placement decisions are made only after a valid IEP has been completed for each child; and

* e. that placement decisions are not made on the basis of the category of a child's handicapping condition.

* 2. ARKDE must submit to OSEP for its approval, within 60 calendar days from receipt of this Report, copies of the materials to be used for providing technical assistance and for the training of appropriate personnel in how to implement their LRE responsibilities. Included in this submission ARKDE must provide a detailed plan for ensuring that all appropriate personnel will understand how to implement their respective LRE responsibilities. ARKDE must submit to OSEP, within 60 calendar days of OSEP's approval, written assurance that all appropriate personnel within the State have received the training on how to implement their LRE responsibilities.

3. ARKDE must submit to OSEP, within one year from receipt of this Report, written verification of the number of changes in placement to less restrictive settings that have resulted from the implementation of these new procedures. This count should be broken down by category of handicapping condition, type of placement, age of child and responsible public agency.

*****END OF REPORT*****

Our next panel is Mr. Pat Trohanis, the Director of the Technical Assistance Development System; Ms. Sharon Walsh of the National Association of State Directors for Special Education; Mr. Martin Gerry, Esquire, the President of the Policy Center for Children and Youth; and Mr. David Rostetter, consultant.

We have copies of your testimony. Unfortunately, Mr. Gerry, we can't have an open-ended one this time. We are going to have to limit the oral testimony to about seven minutes. Your prepared statements will be inserted in the record immediately following your oral presentation.

You may begin, Mr. Trohanis.

STATEMENT OF PASCAL LOUIS TROHANIS, DIRECTOR, NATIONAL EARLY CHILDHOOD TECHNICAL ASSISTANCE SYSTEM

Mr. **Trohanis**. Thank you, Mr. Chairman.

It is a pleasure for me to be here this morning to share some information with you about the National Early Childhood Technical Assistance System, and I really appreciate the Subcommittee's support by including technical assistance as a major form of support to States as they encounter the concerns and challenges for implementing Public Law 99-457.

If I may, I would like to move to the overhead projector to make some summary comments.

Mr. **Owens**. Yes, you may.

Mr. **Trohanis**. The National Early Childhood Technical Assistance System represents a broad mix of multi-players and multi-organizations to reflect a lot of the intent, we believe, of Public Law 99-457.

Working in concert with the key core staff of various organizations, we at the Frank Porter Graham Child Development Center at the University of North Carolina are coordinating this national technical assistance effort, working in partnership with the Office of Special Education programs, with all States and territories in the conduct of the meeting of the various challenges that States are confronting in implementing Public Law 99-457, and we are trying to work closely with a number of other technical assistance and resource groups.

The business that we are involved in is to provide quality and responsive assistance to the States and to continually focus on the needs of children and families. We try to encourage this multi-disciplinary, multi-player perspective and to really focus on a lot of the notions of collaboration and partnership that is so necessary to bring about high quality services to infants, toddlers, preschoolers, and their families.

So, we are working very hard to try to link, since we have been instituted over a six-month period, to work with the development of services that involve the blending of what goes on in the community level as well as those activities that need to take place through State agencies. In this way through this mission, we hope that Public Law 99-457 with its initiatives on behalf of young children will be able to help spread various products, practices, ideas, and new system approaches so that they can be integrated in the system of services to meet the needs of children and families.

The clients of our national technical assistance system are 60 entities that make up the United States, the Bureau of Indian Affairs, Puerto Rico, the Virgin Islands, and our colleagues in the Pacific. So, there are a total of 60 entities that we are charged to provide technical assistance services to in the implementation of Part H, the infant/toddler portion of the bill, and section 619, the preschool portion of the bill.

I thought I would share with you some of the items we found recently through some of the work that we have been doing with the States in terms of some of the needs that States have reported to us that they have for technical assistance. This might give you a clue to some of the challenges the States are facing.

One of the highest need areas is in the area of systems planning coordination, interagency collaboration, how to work efficiently and effectively together with the multiple agencies necessary for working on behalf of infants, toddlers, and preschoolers.

Another major area is definition in eligibility. A number of the States are really grappling with how are we going to define which children and which families will be eligible for services, particularly for the Part H program.

How can we best define developmental delay? What about the at risk population?

Another topic that frequently has come up is transition, and that particular topic has a number of dimensions.

While there was a lot of discussion this morning about transition for youngsters leaving the public schools and going into post-secondary and employment, here we are looking at some of the challenges with what happens with children who will be leaving the Part H program and as they transition into the public school programs or sponsored programs of section 619, what happens if a child, let's say if the public school cut-off date for entrance in the public schools is November 1 but a child's birthday is December 1, a number of States are wondering well, since the schools allow someone to enter if their birthday is November 1, we have to wait a year then for that child to enter.

Who is responsible? Who will pay for the services of that youngster?

So, transition in addition to finance, quality personnel are a number of the major issues that the States are grappling with.

What we are going to try to do as a result of our first six-month effort is try to build upon the best resources that we have and link those resources with the States and the various entities in terms of helping them to solve some of the problems and challenges. We hope to do that through a number of means in terms of the workshop that Mrs. Will talked about in terms of the partnership for progress meeting that was held a year ago. There are plans to do something similar again this coming summer.

Certainly, doing teleconferences—we just had a series of them in cooperation with OSEP to look at issues dealing with both Part H and section 619. There will be materials development, on-site consultation, we have started an electronic bulletin board to help people access that through electronic communication means.

I think that we as a technical assistance and support agency are really going to try as best as we can with the resources that we have to sort of help people to adapt to and provide leadership for the kinds of changes that are necessary to improve services for all of this nation's young children with special needs and their families.

Certainly, we hope as part of our mission is to build and help the States build upon the best practices of the past. There are a lot of good things that have been going on nationwide, and we hope that in our role as a technical assistance agency that we can help do that and facilitate that.

Lastly, we certainly want to help toward working together, that there is no one discipline, no one group that has a lock on all of the answers, but in the words of Mr. Alexander Graham Bell, "great discoveries and improvements invariably involve the cooperation of many minds."

I thank you very much.

[The prepared statement of Pascal Louis Trohanis follows:]

STATEMENT

RESPECTFULLY SUBMITTED

FOR AN OVERSIGHT HEARING

ON THE OFFICE OF SPECIAL EDUCATION PROGRAMS

TO THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

THE U.S. HOUSE OF REPRESENTATIVES

Presented by

Pascal Louis Trohanis, Director

National Early Childhood Technical Assistance System (NEC*TAS)
Frank Porter Graham Child Development Center
University of North Carolina at Chapel Hill
Room 500, NCNB Plaza, CB #8040
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MARCH [illegible], 1988

Outline

I. Introduction

II. NEC*TAS and National TA

    A. Mission, Goals, and Tasks of Technical Assistance (TA)

    B. Definition of TA

    C. Recipients of TA

    D. NEC*TAS Organization

    E. Processes and Services of TA

    F. State Needs for TA

    G. NEC*TAS Relationships to Other TA Groups

    H. Accomplishments to Date

    I. Projected Activities

III. Closing

Good Morning Mr. Chairman and Members of the Subcommittee:

I am Pascal Trohanis, Director of the National Early Childhood Technical Assistance System (NEC*TAS). We are an information, consultation, and support system sponsored by OSEP to serve all of America's jurisdictions who are eligible to participate in the early childhood activities under Part H and Section 619 of P.L. 99-457.

I. Introduction

I am pleased to have the opportunity to testify before this Subcommittee which is comprised of and staffed by dedicated individuals. It is these individuals, who, together with many citizens, form a chain of hope and partnership so vital in making the planning and implementation of the EHA's infant, toddler, and preschool initiatives a success in America over the next four years.

I am testifying on behalf of the NEC*TAS organization which represents a collaborative approach for nationwide technical assistance (TA) which began on October 1, 1987. I will bring you up-to-date about our mission for TA, the recipients of our services, our organization, the processes and services of TA, the needs for TA, relationships with other TA groups, accomplishments over the last 6 months, and projected activities for our contract.

II. NEC*TAS and National TA

What is our TA mission, goals, and tasks?

Our mission is to assist states in the development and provision of multidisciplinary, comprehensive, and coordinated services for children with special needs (birth through eight years of age) and their families that will permit them to reach their optimal developmental potential, and participate in their family and community life with dignity and self respect.

Our approach is designated to meet three major goals:

1. to help community agencies and other entities develop their capacity to provide high quality comprehensive services to all children with special needs and their families;
2. to help each state explore, develop, and operationalize statewide policies and practices for accomplishing their goals and activities in relation to improving and expanding comprehensive services; and,
3. to help facilitate the national exchange of up-to-date research and best practice information via communication, materials, and linkage strategies among states and national resource groups and organizations.

As part of our contract, NEC*TAS must address 14 separate but related workscope tasks. These include such areas as needs assessments to determine TA needs; the development of TA Plans; generation and dissemination of state-of-the art information; evaluation; and administration. (See Attachment 1 for an overview of these tasks.)

What is technical assistance (TA)?

Technical assistance (TA) is an ongoing process that uses a variety of planned support strategies involving people, procedures and products over time to enhance the accomplishment of outcomes mutually supported by the sponsor (OSEP), the recipients (states), and the TA agency (NEC*TAS). Outcomes for states may include increased awareness about other state practices and new innovations, improved skills of professionals and parents, and developed statewide or local policies or procedures.

Who are the recipients of our TA?

According to our contract for TA with OSEP and the U.S. Department of Education, NEC*TAS is responsible for serving two main recipients groups:

1. Primary Recipients — Personnel in state agencies and Interagency Coordinating Councils administering Part H (infant-toddler grant program), the State Educational Agency administering Section 619 (preschool grant program), and others as designated. Eligible recipients for services represent 60 entities — the 50 states, the District of Columbia, the Bureau of Indian Affairs, and 8 other governmental entities (American Samoa, Federated States of Micronesia, Guam, Northern Mariana Islands, Palau, Puerto Rico, Virgin Islands, and Marshall Islands). (See Attachment 2 for maps of entities.)

2. Secondary Recipients — Personnel in demonstration and outreach grants funded through the Handicapped Children's Early Education Program (HCEEP) of OSEP. This group consists of 102 grantees.

Additionally, given staff time and availability, NEC*TAS may serve selected technical assistance agencies, professionals, and parents involved in planning and developing comprehensive services for young children with special needs and their families.

What is our organization?

Reflecting the collaborative spirit called for in P.L. 99-457, NEC*TAS embodies the multidisciplinary professional and parental expertise necessary to support through TA the development of new and improved comprehensive services in states. The NEC*TAS organization has been designed and will be implemented by a mix of administrative, program, and support staff, involving six nationally respected and talented organizations: The Frank Porter Graham Child Development Center at UNC-CH (as prime contractor) and five key collaborators (subcontractors) — Georgetown University Child Development Center, the National Center for Clinical Infant Program (NCCIP), the National Association of State Directors of Special Education (NASDSE), National Network of Parent Centers, and the University of Hawaii. This constellation of talent and expertise reflects our belief that multiple resources are needed to meet the diverse needs of TA clients.

In addition to the NEC*TAS staff in these six agencies, our TA organization is enriched by the cutting-edge knowledge of many available experts and consultants. These individuals will help us address the policy and implementation issues identified by the states. Also, our Advisory Group will provide us with program guidance and quality control. Furthermore, our approach relies on maintaining liaison with other key TA groups for the purposes of cooperative TA planning and implementation. Finally, we have engaged the services of two external evaluations to help us monitor program development and quality matters. (See Attachment 3 for a graphic representation of our organization.)

What are the processes and services of our TA system?

Based on our understanding of the background and context for the P.L. 99-457 national policy implementation agenda for comprehensive services to young children with special needs and their families, NEC*TAS has designed a TA approach that seeks to address the unique needs of each state, as well as their collective needs. NEC*TAS aims to provide its resources in a cost efficient and effective manner to support each state to fulfill their comprehensive service goals.

NEC*TAS will emphasize capacity building through the management of broad, multifaceted TA strategies to a variety of recipients in each state. Some of the strategies that we employ include use of expert teams; on-site consultation; resource materials and packages; telephone consultation and conference calls; small group meetings; topical workshops; on-going liaison and resource referral; and the Early Childhood Bulletin Board through the electronic communication system called SpecialNet. (See Attachment 4 for an overview to our TA process.)

What are the state needs for our TA?

During January and February of 1988, NEC*TAS convened states in a series of regional needs assessment and planning meetings. Teams of state representatives identified high priority needs for TA. These needs were analyzed and classified for a National TA Plan that was submitted to OSEP. These content needs serve as the NEC*TAS blueprint for the TA services to be provided over the next 6 months. (See Attachment 5 for copy of the overview of needs for the National TA plan.) The state needs clustered in the following manner:

Cluster 1: Interagency Coordination.

This largest cluster of needs for TA is related to three general areas: the functioning of the State Interagency Coordinating Council; interagency planning in terms of an overall vision for a state system, agreements, and the relationship between state-level and local-level planning; and local-level (community) planning.

Cluster 2: Child Identification.

This cluster includes needs dealing with the definitions and eligibility criteria to be used to identify children and families for services; child find; and screening and assessment policies and procedures.

Cluster 3: Family Issues.

This cluster entails concerns of family assessment and Individual Family Service Plans (IFSP); case management and models; strategies for parent involvement; and transition.

Cluster 4: Funding.

This cluster of needs consists of funding options for comprehensive service delivery approaches and developing cost projections for these services.

Cluster 5: P.L. 99-457.

The needs in this cluster relate to interpretations of Part H and Section 619 and best practices concerning the least restrictive environment (LRE).

Cluster 6: Public Awareness and Support.

This cluster reflects needs for developing state and community public awareness programs for targeted publics and for designing parent networking activities.

Cluster 7: Assuring Qualified Personnel.

This cluster encompasses needs related to developing competencies and certification/licensure standards for early childhood personnel, as well as designing training strategies.

Cluster 8: Evaluation.

This cluster focuses on needs targeted for TA in program outcome evaluation and system evaluation.

Cluster 9: Other Issues.

This general cluster calls for TA in areas such as state relationships with BIA and DODD schools, cultural diversity, and Part H and Section 619 administrative matters (e.g., grant applications).

What is the relationship between NEC*TAS and other TA and R & D organizations?

NEC*TAS is making every effort to coordinate its TA Plan services with other TA and related resource organizations. Toward this end, we maintain active liaison with groups such as:

- TA to Parent Programs project
- Research Institutes including Policy Studies, Personnel, and Early Intervention Effectiveness
- Advocacy and professional organizations such as the American Academy of Pediatrics and the National Down Syndrome Congress
- Regional Resource Centers
- Resource Access Projects
- TASH TA Project
- Mental Health Law Project
- University Affiliated Programs (UAPs)
- National Resource Institute on Children with Handicaps (N-RICH)
- National Maternal and Child Health Resource Center
- MCH Clearinghouse
- Association for the Care of Children's Health (ACCH)
- National Information Center for Handicapped Children and Youth (NICHCY)
- Pediatric Research and Training Center

What has NEC*TAS accomplished in its first 6 months?

NEC*TAS, emerging as a new TA system with its multiple team members, has engaged in a number of activities supportive of states' early childhood efforts. During the past six months, NEC*TAS has:

1. Developed and distributed a planning guide to help states conceptualize comprehensive services.
2. Planned and conducted four regional needs assessment and planning meetings that were attended by 57 of the 60 governing entities, with 160 state representatives plus staff from the Regional Resource Centers in attendance.
3. Disseminated 2,758 pieces of resource materials to states and others.
4. Developed and submitted to OSEP a National TA Plan which was approved recently.
5. Planned and convened with OSEP a teleconference to discuss P.L. 99-457 program matters with state contact persons for Part H (54 representatives from 43 states) and Section 619 (46 representatives from 37 states).
6. Made contacts with a number of related TA groups and programs.
7. Established the Early Childhood Bulletin Board via the electronic communications system known as SpecialNet.
8. Convened a teleconference to discuss collaborative planning matters involving states, BIA, and related program initiatives.
9. Provided telephone consultation and information referral to states.
10. Began our external evaluation activities.

Where are we headed?

During the remaining 6 months of our first contract year, NEC*TAS will:

1. Plan and implement state-specific TA activities to meet the individual needs of all 60 entities of the U.S., through activities such as consultation, small group meetings, and teleconferences.
2. Operationalize the next phase of the resource information system (Clearinghouse) and develop additional materials for sharing among states.

3. Form and use resource (expert) teams of professionals and parents to help us research, analyze, develop and prepare support materials to respond to the implementation challenges confronting states.

4. Complete and distribute a directory of selected early childhood programs sponsored by the U.S. Department of Education, including Part H and Section 619 contacts, chairs of State Interagency Coordinating Councils, projects funded through the Handicapped Children's Early Education Program, research grants and institutes, and personnel preparation grants.

5. Support OSEP and its work with the Federal Interagency Coordinating Council to plan and implement a national conference on Part H — "Partnerships for Progress II".

6. Continue topical telephone conference calls as needed.

7. Provide on-going staff liaison between our TA system and state representatives to insure that needs are being addressed responsively.

8. Plan and convene with OSEP a topical workgroup on the Individualized Family Service Plan (IFSP).

9. Maintain liaison with other TA groups such as the Regional Resource Centers (RRCs), Early Childhood Research Institutes, and others for joint planning and execution of TA.

10. Convene a second round of regional TA needs assessment meetings.

III. Closing

The National Early Childhood TA System (NEC*TAS) will execute a number of different TA roles and processes required to assist states in accomplishing their goals and activities. We will draw on the persistent energy, trust, innovative spirit, dedication, collaboration, and goodwill of many people and organizations from across the nation. Further, we will rely on our wealth of information resources and human expertise to meet the specific needs of our clients. Finally, our responsive approach strives to emulate the cooperative spirit of the national initiative implied in P.L. 99-457 aimed at improving and expanding comprehensive services to young children with special needs and their families in America.

Once again, thank you for the invitation to share our work with you.

ATTACHMENTS

1. Overview to NEC#TAS contract tasks
2. Maps of entities served by NEC#TAS
3. Graphic representation of NEC#TAS organization
4. Overview to TA process
5. Overview of needs for the National TA Plan

OVERVIEW TO
INDIVIDUAL TASK DESCRIPTIONS FOR NATIONAL EARLY CHILDHOOD TA SYSTEM
(1987-88)

Task 1: **Meet with COTR (Pat Trohanis is TC)**

Task 2: **Establish NECTAS (Pat Trohanis & Lynne Kahn are TCs)**

- 2.1: Develop organizational structure and staffing plan
- 2.2: Develop expert teams
- 2.3: Establish D.C. office
- 2.4: Conduct staff development
- 2.5: Conduct formative evaluation of organization with RMC
- 2.6: Maintain liaison with other TA groups and special projects

Task 3: **Prepare annual directory (Joan Danaher and Marcia Decker are TCs)**

Task 4: **Establish NECTAS Advisory Group (Pat Trohanis is TC)**

- 4.1: Establish Advisory Group
- 4.2: Conduct semi-annual meetings
- 4.3: Maintain contact between group meetings

Task 5: **Establish and maintain resource information system (Joan Danaher is interim TC)**

- 5.1: Establish access and retrieval system
- 5.2: Acquire and generate information
- 5.3: Produce and dissseminate materials and information

Task 6: **Conduct Regional Needs Assessment Meetings (Tal Black is TC)**

- 6.1: Design needs assessment guide
- 6.2: Prepare for meetings
- 6.3: Conduct meetings

Task 7: **Determine priorities and plans for TA (Lynne Kahn is TC)**

- 7.1: Develop draft state TA plans
- 7.2: Develop overall national TA plan
- 7.3: Negotiate and prepare TA agreements

TC refers to task coordinator at FPG/UNC office

Task 8: **Provide technical assistance to clients (Tal Black and Joicey Hurth are TCs)**

8.1: Provide TA as per TAA's

8.2: Offer low cost TA to HCEEP demonstration and outreach projects

8.3: Use expert teams in TA provision

Task 9: **Evaluate needs assessment and technical assistance (Tanya Suarez is TC)**

9.1: Establish monitoring system

9.2: Conduct effectiveness activities with NETWORK

9.3: Determine impacts

9.4: Conduct special studies

Task 10: **Conduct two topical meetings (Lynne Kahn is TC)**

10.1: Identify topics and plan with OSEP

10.2: Conduct meetings

10.3: Compile meeting outcomes and products

Task 11: **Establish a Performance Management System (Pat Trohanis and Lynne Kahn are TCs)**

11.1: Prepare and submit monthly administrative progress reports

11.2: Prepare and submit financial reports

11.3: Prepare and submit quarterly (SF295) and semi-annual (SF294) subcontract reports

11.4: Prepare and submit draft and final annual report which includes a state self-assessment describing status of comprehensive services

Task 12: **Conduct large group EC Conference in DC (Lynne Kahn is TC)**

12.1: Plan with OSEP

12.2: Conduct conference

Task 13: **Conduct HCEEP Projects Meeting in DC (Tal Black & Joicey Hurth are TCs)**

13.1: Plan with OSEP

13.2: Conduct meeting

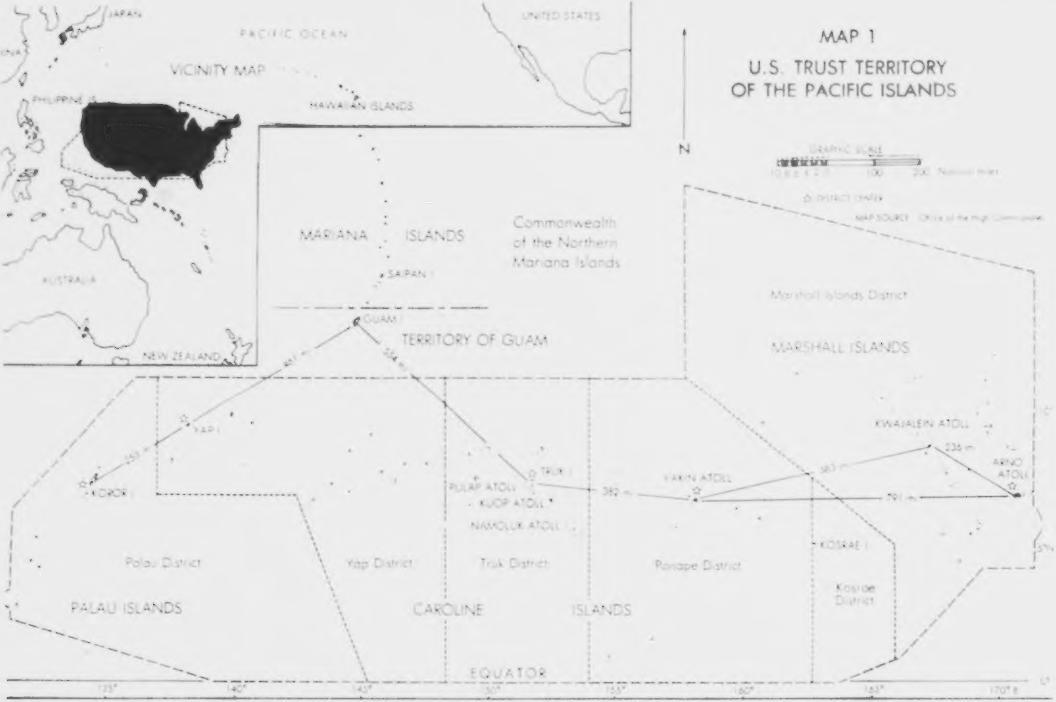
Task 14: **Conduct two Small Group Review Meetings in DC (Pat Trohanis is TC)**

14.1: Plan with OSEP

14.2: Conduct meetings

12/10/87

BIA
• Puerto Rico
• Virgin Islands


JAPAN
PACIFIC OCEAN
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Commonwealth of the Northern Mariana Islands
SAIPAN I.
GUAM I.
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Marshall Islands District
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791 mi
YAP I.
153 mi
KOROR I.
TRUK I.
PULAP ATOLL
KUOP ATOLL
NAMOLUK ATOLL
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PAKIN ATOLL
KOSRAE I.
Palau District
Yap District
Truk District
Ponape District
Kosrae District
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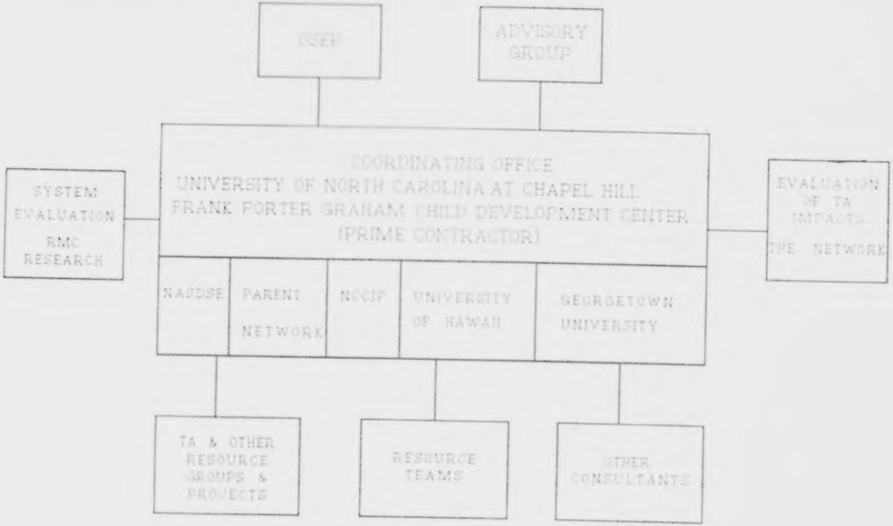
MAP 1

U.S. TRUST TERRITORY OF THE PACIFIC ISLANDS

The National Early Childhood Technical Assistance System



OSEP

ADVISORY GROUP

COORDINATING OFFICE
UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
FRANK PORTER GRAHAM CHILD DEVELOPMENT CENTER
(PRIME CONTRACTOR)

SYSTEM EVALUATION
RMC RESEARCH

EVALUATION OF TA IMPACTS
THE NETWORK

NASDSE

PARENT NETWORK

NCCIP

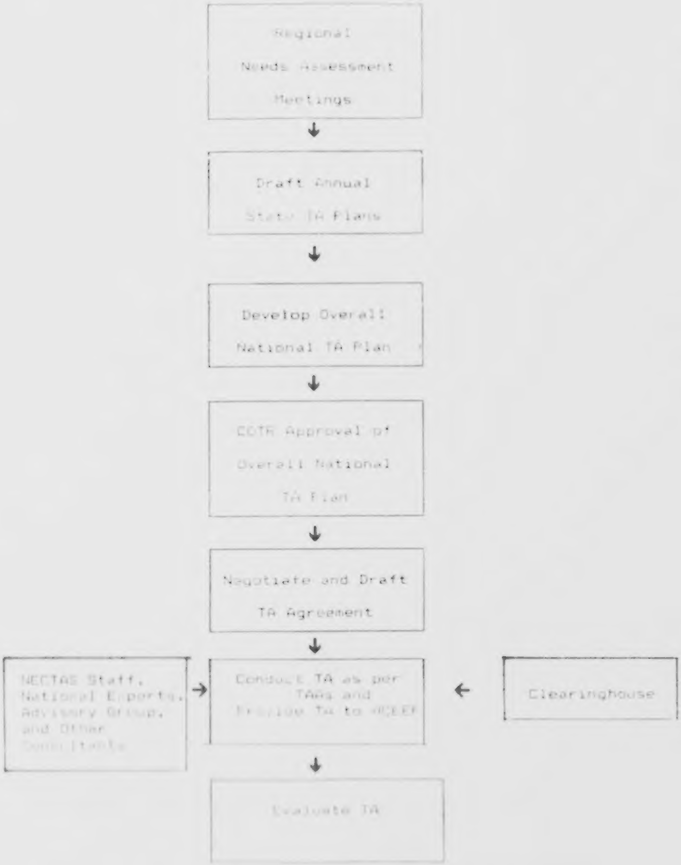
UNIVERSITY OF HAWAII

GEORGETOWN UNIVERSITY

TA & OTHER RESOURCE GROUPS & PROJECTS

RESOURCE TEAMS

OTHER CONSULTANTS


Regional Needs Assessment Meetings
Draft Annual State TA Plans
Develop Overall National TA Plan
COTR Approval of Overall National TA Plan
Negotiate and Draft TA Agreement
NECTAS Staff, National Experts, Advisory Group, and Other Consultants
Conduct TA as per TAAs and Provide TA to HCEEP
Clearinghouse
Evaluate TA

The Annual NECTAS Technical Assistance Process.

THE NATIONAL EARLY CHILDHOOD TECHNICAL ASSISTANCE SYSTEM

NATIONAL TA PLAN

February 16, 1988

Compiled by:

Pascal Trohanis, Project Director
Lynne Kahn, Associate Director for Organization & Staff Development and TA Planning Task Coordinator
Joicey Hurth, Associate Director of TA Services
Joan Danaher, Associate Director of TA Services
Talbot Black, Associate Director of TA Services
Shelley Heekin, TA Specialist

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II. Technical Assistance to States
  - A. Overview to State Needs
  - B. Individual State TA Plans

III. Technical Assistance to HCEEP Projects
  - A. Summary of Needs
  - B. TA Strategies

I. INTRODUCTION: PROCESS AND PROCEDURES

The NECTAS National Plan, as required in Task 7 of our contract, addresses the technical assistance needs of two major TA client groups. The primary TA clients are states and other entities who are planning and implementing comprehensive services for young children with handicaps and their families (as per PL 99-457). The second client group comprises currently funded HCEEP Demonstration, Inservice, Experimental, and Outreach projects. The TA planning process for each of these client groups is described below.

The State TA Planning Process

As called for in Task 6 of the NECTAS contract, the technical assistance needs of states described in this document were determined via three regional needs assessment meetings, held in Raleigh, North Carolina, January 11-13 and 13-15, and in Salt Lake City, Utah, January 19-21, 1988. Participating in the meetings were representatives of Part H programs, section 619 programs, and, in some cases, Interagency Coordinating Councils, from each of the continental United States, the District of Columbia, Alaska, the Virgin Islands, Puerto Rico, and the Bureau of Indian Affairs. Representatives of the appropriate Regional Resource Centers were also in attendance at each regional needs assessment meeting.[1]

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[1] The needs of three continental states and the Pacific Islands are not represented in this plan. As discussed with OSEP, an addendum to the national plan will be developed which addresses these entities' TA needs and plans. The reasons for this addendum are twofold: Three states were unable to attend their designated needs assessment meeting for reasons including illness and bad weather, and, because of scheduling difficulties, the meeting for Pacific Basin entities occurred too late (February 10-12) to allow analysis of Pacific Basin needs to be included in this Plan.

As an outcome of the needs assessment meetings, each state's representatives generated and prioritized three to six requests for NECTAS technical assistance. Following the needs assessment meetings NECTAS staff organized the TA requests into topical clusters to provide an overview to national TA needs and priorities. At a national TA planning meeting held January 28 and 29 in Chapel Hill, strategies for meeting TA needs in the various topical clusters were developed. A summary of the nature of TA needs in each topical cluster and proposed TA strategies for meeting each cluster of needs are presented in Part II of this report. Considerations of common needs across states, priorities of individual states, and the cost and level of effort required to provide various technical assistance services were balanced in the determination of individual state TA Plans. Those plans which have been drafted by NECTAS and approved by states are also included in Part II of this report.

The HCEEP Project TA Planning Process

To plan technical assistance to HCEEP demonstration, inservice, experimental and outreach projects, NECTAS developed and mailed a TA Interest Survey to all project directors (N=102 projects). The survey described potential low-cost technical assistance services that could be developed for HCEEP projects this year and asked for director interest and content suggestions for the following:

a. teleconferences on various proposed topics.

b. agenda suggestions for the HCEEP Projects meeting.

c. a consultant-led Comprehensive Program Review (CPR) and orientation to HCEEP for first year projects whose director and fiscal agency are new to the HCEEP network.

d. materials and planning support for directors who want to conduct their own Comprehensive Program Review

e. an opportunity to propose a small group work session on best practices in a service area of interest and to document findings for others to use.

Fifty-eight responses from surveys were tallied (Where appropriate) to indicate number of projects interested in a given topical conference call, similar HCEEP Projects agenda suggestions, or topical propositions for small group work sessions. Requests for CPR consultations or materials support and other general suggestions were recorded also. Results and plans for services are provided in Part III: Technical Assistance to HCEEP projects.

II. TECHNICAL ASSISTANCE TO STATES

NECTAS plans for technical assistance to states will be described in this section from two perspectives. First, a summary of TA needs and strategies will be presented from a national perspective, organized according to eight topical clusters of state client needs: 1) Interagency Coordination Issues, 2) Child Identification, 3) Family Issues, 4) Funding, 5) PL99-457, 6) Public Awareness and Support, 7) Personnel, and 8) Evaluation. In addition, TA needs and objectives are specified on an individual state basis in the attached State TA Plans.

Overview to State Needs

The needs discussed below were rated by states as those of highest priority for NECTAS technical assistance in the upcoming six month period. (A second round of NECTAS TA needs assessments is scheduled to occur in July/August, 1988.) Needs which were judged by a state's representatives to be first or second priority for TA were given highest consideration in NECTAS planning. Needs rated by states as third through sixth in priority were considered for NECTAS TA as needs were common across states and as NECTAS human and fiscal resources could allow.

Many of the states' TA requests reflected need in more than one topical area, (e.g. a request for "help in developing a collaborative, productive, working relationship among Interagency Coordinating Council (ICC) members so that a definition of developmentally delayed can be developed" involves two areas of need: interagency group processing/group dynamics skills and definition of developmentally delayed issues and implications). For this reason, the numbers of TA requests received by NECTAS in each topical cluster represent in some cases a duplicated count. Thus, the numbers of requests for TA in each topical area are provided only for illustrative purposes to indicate areas of greatest concern from a national perspective.

Cluster 1: Interagency Coordination Issues

The largest cluster of state TA needs were related to interagency processes and mechanisms for system planning. There were 53 TA requests in this cluster, 40 of which were first or second highest state priority, and 13 of which were third or lower priority. The needs in this cluster were of three general types.

a. One subgroup of TA requests concerned ICC functioning. These included needs for help in providing an orientation and understanding of PL99-457 to an ICC, team building and developing working relationships among ICC members, articulating ICC roles and responsibilities, bylaws, and organizational structures, and developing ICC mission statements, priorities, and action plans.

b. A second group of needs addressed interagency planning issues. These focused on specific planning and interagency policy analysis tasks and on big-picture conceptualization of comprehensive systems. The TA needs included requests for help in developing system planning strategies and skills, examples of how other states have defined the components of their comprehensive systems, and information outlining the considerations and implications of various models of comprehensive service delivery systems (CSDS). Also In this subgroup were requests for assistance in developing interagency administrative structures and interagency agreements, designing and implementing comprehensive needs assessments, and undertaking a variety of interagency policy analysis and development tasks.

c. The third subgroup reflected state efforts at community level interagency coordination. They focused on interagency team building and on developing interagency agreements at the local level.

NECTAS Response. NECTAS TA plans address this topical cluster through several strategies:

- collecting/developing and disseminating materials on group dynamics and group processes
- training a group of NECTAS staff and consultants in group dynamics skills who can then provide individual consultations to ICC chairs and state Part H grant coordinators
- collecting and disseminating ICC materials such as bylaws, organizational structures, mission statements, etc.
- collecting, analyzing, and disseminating models of comprehensive service delivery systems
- conducting individual on-site consultations
- organizing an expert team (a group of national experts) to address issues in interagency coordination
- targetting interagency coordination, if possible, as the theme for the National Early Childhood Conference (Task 12 of the NECTAS contract) to be held in the summer of 1988.

Cluster 2: Child Identification

The second topical cluster included TA needs relating to the identification and assessment of the target population. Thirty-six TA requests fell into this cluster, 18 high priority needs (first or second priority) and 18 lower priority needs (third priority or lower). The cluster can best be described as four subtopics.

a. The first subgroup of requests in this cluster dealt with defining developmental delay and establishing eligibility criteria. States want information about the implications of various definitions and eligibility criteria on costs, projected numbers of eligible children and families, and the subsequent design of service models. Requests included the need for examples of what other states are adopting, analyses of implications, and assistance in planning and decision making. The issue of serving children "at risk" is central to this group of needs.

b. The next subgroup consisted of requests related to Child Find systems. There is interest in learning about various models which are currently in use, exploring issues regarding coordinating Child Find activities across agencies, and designing comprehensive Child Find systems.

c. The largest subgroup of needs in this cluster addressed various aspects of screening and assessment policies and procedures. States want information about multidisciplinary infant screening and assessment instruments, procedures and guidelines, and personnel training strategies. TA requests also reflected needs for assistance in developing and coordinating policies in this area.

d. The final subgroup in the cluster was composed of requests for examples, information, and help designing tracking systems.

NECTAS Response. Plans for TA in this area include:

- o developing and distributing an issue paper on serving children and families at risk for developmental delay
- o developing and distributing an information package which will analyze and review eligibility criteria options
- o distributing START resource packets on Child Find and Screening with facilitated conference call follow-up
- o collecting and distributing examples of screening and assessment guidelines
- o collecting/developing and distributing information on multidisciplinary assessment of infants
- o conducting individual on-site consultations
- o organizing two expert teams to address issues in 1) definition and eligibility and 2) screening and assessment

Cluster 3: Family Issues

This topical cluster accounted for 35 state needs, only five of which were high priority needs (states' first or second priority for NECTAS TA). The cluster was composed of TA requests in four interrelated topical areas.

a. The first subgroup of needs concerned family assessment and IFSPs. States requested examples of and help in reviewing family assessment instruments and procedures. They also expressed need for examples of IFSP formats and procedures, and help developing policies and guidelines for IFSP use.

b. The second subgroup contained requests for information about case management systems, including description and analysis of implications of various case management models.

c. The third grouping addressed needs for developing strategies to maximize parent involvement in services, empowering parents to effectively participate in state level planning and policy development, and defining "family services" as part of a comprehensive service system.

d. Finally, several state needs were related to transition issues. Of particular concern was obtaining information to help plan for smooth transition for children and families from Part H to 619 programs.

NECTAS Response. TA plans for this topical cluster include:

o collecting and disseminating examples of ISFPs in use across the nation

o convening a work group meeting to review IFSP models and best practices

o developing and disseminating an information packet which summarizes issues related to ISFP design and related guidelines and policy development

o compiling and disseminating a document which reviews case management models and best practices

o convening a conference call to facilitate follow-up discussion of case management issues

o conducting individual on-site consultations

o providing individualized information on family issues

- organizing expert teams to address the areas of 1) IFSP and 2) case management/transition

Cluster 4: Funding

Twenty-three needs were grouped in the funding cluster, eight of them high priority needs (first or second priority) and fifteen lower priority needs. They concerned two major funding issues.

a. Most of the TA requests in this cluster were for information on funding options for comprehensive service systems. States want descriptions of available funding streams and eligibility and other guidelines attached to the uses of various sources of funds. Also needed is assistance in developing coordinated funding systems.

b. The second focus in this cluster was on developing cost projections for various service models.

NECTAS Response. NECTAS' approach to TA in the area of funding includes:

- collecting and distributing existing information on funding streams for early intervention services
- convening a two to three day topical meeting for designated states on funding issues, to include participant work sessions with consultant facilitators
- developing and disseminating a proceedings document following the topical meeting
- organizing an expert team to address funding issues

Cluster 5: PL99-457

The needs in this topical cluster related to interpreting various aspects of the law, the regulations, or congressional intent. There were 21 TA requests in this cluster, six high priority needs and 15 lower priority needs. The requests for assistance were of two general types.

a. The majority of requests for assistance in this cluster involved the need for clarification or interpretation of sections of the law that had specific implications for state planning. These ranged from needs for general understanding of the intent of the law to provide impetus to newly forming ICCs, to specific questions concerning such issues as procedural safeguards, timelines for policy development requirements, and the implications of fiscal responsibility.

b. Several states also requested information about best practices and models of LRE for children birth to five, and help in developing LRE policies.

NECTAS Response. TA plans to meet these needs include:

- collecting/developing/adapting and distributing general information packages and individualized information packages on PL99-457
- developing and disseminating an LRE issues and best practices document
- providing individual on-site consultations
- organizing an expert team to address LRE issues

Cluster 6: Public Awareness and Support

Nineteen needs were reflected in the public awareness and support topical cluster. Nine were high priority needs and ten were lower priority. The requests fall into three subtopical strands.

a. States need information about, examples of, and help developing public awareness strategies to engender broad based support for early intervention efforts. The public awareness campaigns will focus on the new law and on the importance and benefits of early intervention.

b. States also requested assistance in developing approaches to public support which target specific audiences to accomplish specific purposes. The two most common of this type of request are aimed at 1) pediatricians and health care providers, to bring them into the system at both the planning the implementation levels, and 2) legislators, to build support networks to enable mandated services at some future time.

c. The third type of need in the area of public support involved parent networking. States want examples of strategies and help developing parent support systems.

NECTAS Response. Plans for technical assistance in this area include:

- distributing the START public awareness information packet and conducting follow-up conference call discussions
- building on and disseminating the information about PL99-457 (as described previously in cluster 5)
- developing and distributing a parent networking information packet

- conducting individual on-site consultations
- providing individualized information services
- organizing an expert team to address public awareness issues

Cluster 7: Assuring Qualified Personnel

Personnel issues accounted for 18 state needs, seven high priority and eleven of lower priority. The requests fell into two related subgroups.

a. Most of the needs in this area related to developing competencies and credentialing/certification/licensure standards for early intervention professionals and paraprofessionals. States requested information about and examples of what other states have developed, and also want assistance in personnel policy development.

b. Other needs in this cluster dealt with developing personnel training strategies, including preservice and inservice components. Information about existing training efforts and help in planning were requested.

NECTAS Response. NECTAS technical assistance strategies in this area include:

- compiling and disseminating information packet(s) which will include examples and a presentation of issues relating to certification and licensure standards in various early intervention disciplines
- developing and disseminating an information packet on early intervention and preschool personnel training programs
- providing individual on-site consultations

- o providing individualized information services
- o organizing an expert team to address personnel issues

Cluster 8: Evaluation

Twelve state needs were included in this topical cluster, six high priority needs and six lower priority needs. All of the requests were for individual assistance in developing evaluation strategies and designs. Among the state evaluation efforts targeted for TA were comprehensive system evaluation, program outcome evaluation, pilot project evaluation, and local monitoring strategies. Issues raised in the requests included quality standards for early intervention programs and models for system evaluation.

NECTAS Response. Plans for TA in this area include:

- o conducting individual consultations
- o organizing an expert team in the area of evaluation to address quality standards and system evaluation

Additional State Technical Assistance

In addition to the technical assistance strategies described in this overview and further specified in the individual State TA Plans which follow, NECTAS staff in the Coordinating Office will be available to state clients for ongoing telephone consultation, resource referrals, and other low cost technical assistance services on an as-needed basis. NECTAS will make every effort to coordinate TA Plan services and additional responsive state TA services through its system-wide staff and with other available technical assistance and related resources, (e.g. the RRCS, the Policy and Personnel

Institutes, the EI Effectiveness Institute, OSEP's IFSP study, and others).

Individual State TA Plans

The following state TA Plans have been developed by NECTAS technical assistance staff based on information gathered via the three regional needs assessment meetings. Presented first, in alphabetical order, are those TA Plans which have been approved by states as drafted. The second set of TA Plans are those which require further negotiation with state agency personnel.

Mr. Owens. Thank you.
Ms. Walsh?

STATEMENT OF SHARON WALSH, ASSOCIATE DIRECTOR, GOVERNMENTAL RELATIONS, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

Ms. Walsh. Thank you, Mr. Chairman.

My name is Sharon Walsh, and I am representing the National Association of State Directors of Special Education, NASDSE. We are very pleased and appreciate this opportunity to be here to share with you our views on the implementation of the two new early childhood initiatives enacted in 1986.

Our remarks today will focus on both the new programs, the Part H infant and toddler program which I will mention first and the preschool program.

These remarks are the result of 18 months of activity that States have undertaken in order to implement this new provision.

Upon the enactment of the statute in 1986, we began a series of activities. Primarily, two task forces were appointed, each representing one of the new programs. Those task forces were created to coordinate our response to the regulations as they appeared in draft form as well as to identify and implement issues.

We worked closely with the Department of Education throughout that time in working as these issues have been clarified and, hopefully, resolved. We presented several documents last summer where we had compiled a series of issues and dilemmas, I would say, that States and locals were facing in implementing these new programs.

This background is provided really to illustrate for you the importance that we place on these two new programs. To date, we have seen much success, and I will share that with you today. However, we need to emphasize that this success can only continue if some major issues are resolved and rather rapidly and if we can be assured of continued Federal commitment.

We believe these programs are critically important for the lives of young children and their families. First, I would like to discuss the Part H program.

Although States are only six months into the program, we have seen much bench marks and obvious signs of progress, and we would like to share several of those with you today. States are proceeding very enthusiastically, although with some caution, as you might expect in such a new and novel program.

We see new models of State collaboration. We see models of local collaboration. We see increased coordination with prevention efforts. We see infant tracking systems starting at birth which will help families assure the provision of services as their children grow into young adults and adulthood.

States are already sharing approaches and solutions and draft policies with each other. As was just discussed, the National Technical Assistance System as well as the RRC's have been instrumental in putting States together and linking them so that we don't have solutions reinvented over and over but we can benefit from each other's progress in this short period of time.

State councils are meeting. We see obvious progress that they are not only meeting, but they appear to be having viable roles in planning. NASDSE has just completed a survey which was responded to by all States and most territories. According to that survey which was designed to track State progress so far in the program, we see that most councils have already met at least once. Over half of them met prior to January 1, and over half of them plan to meet more than the required four times.

States are, as you know, in the process of determining what population they will serve. We have records which indicate from States that 11 have already adopted their official definitions, and 14 States have decided to already include the at risk optional category in their definitions, while other States are going to be pursuing that as a matter of development and planning over the next several years.

States report that they are spending significant portions of their Part H dollars in planning and development, and we feel this is in keeping with your statutory intent. Funds in this area are being used for a number of important things, primarily models and pilot programs which will serve children but will also help the State institute and make decisions for the statewide system.

We also see local collaborative efforts mirroring the State collaborative councils and interagency groups being funded at this time with those dollars.

In all, about 34 States report that they are using some of these dollars in varying percentages for direct service dollars, so they are not just planning activities going on but also direct service dollars are being used to expand on services that are already being provided.

We are hopeful that many of the issues that have been discussed already today such as parent involvement, family practices, IFSP's, monitoring, some of the things that we know are going to take a lot of effort to resolve will be and hopefully can be resolved in the matter of the few years we have to get this program into implementation. However, I would like to mention two issues that we really feel we need Federal support and leadership on.

These two issues are, first, finance. As you know, there is strong emphasis in the statute that these services are to be provided as a coordinated interagency effort with all agencies participating in the sharing of those costs. This is proving problematic to States already, and this is something, of course, we expected.

Several States have already reported to us that funds from other programs which had previously been used to provide early intervention services are being redirected, withdrawn, and put into other priority areas, obviously creating a dilemma for the agency which is charged with being the lead in this program.

While the lead agency was intended to be critical in setting up these financial policies, frequently, the ability to compel other agencies is something which is beyond their organizational capability as a State. So, we believe this issue really needs some careful attention.

The second issue is confidentiality and release of records. This is not a new issue to any of us, and, certainly, we wrestle with it and will continue to. However, in some States, we are hearing that this is a monumental barrier which is really inhibiting the progress of the program.

Agencies report citing Federal and State difficulties with this process that they just cannot share data under any conditions. If we don't resolve this issue, as you are well aware, duplication of assessment services and other things will continue as well as we will continue to have families fall between the cracks which is certainly not what we intend.

We feel strongly that Federal involvement in these two problems and assistance will be of significant value to States as they continue to struggle with these issues on a State level. We believe that assistance can come very quickly, we hope, through the Federal Interagency Coordinating Council.

We are very pleased to note that this council, although new, has met several times, has signed an initial interagency agreement, and we note that that agreement has stated that this council will serve as a national model for interagency linkages and was really meant to mirror the State interagency councils. That is very critical to the States. A unified message from all Federal agencies must be delivered if progress is to occur.

We therefore have three suggestions in this regard. We suggest that the council include representation from the States and families to assure that constituents and consumers are represented.

Second, we suggest that the interagency council receive representation from the Health Care Financing Administration. We need to resolve issues related to finance. They will be key members of such deliberations.

Third, we suggest and strongly encourage that council to begin by focusing on the two issues which I mentioned before. We recognize these are complex and will not be resolved quickly, but any progress that can be made in clarifying them at the Federal level will serve States well in their progress.

I would like to address remarks to the preschool program, but if you would like me to wait, we can talk about Part H first.

Mr. **Owens**. You may have a concluding sentence.

Ms. **Walsh**. We strongly request that the council begin with these two issues, because it really will help States in their progress, and we know this will take time.

That is the conclusion of my results on Part H, but I would like to spend a few minutes on preschool, if I may.

Mr. **Owens**. You may have one minute.

Ms. **Walsh**. Thank you.

I think I have some good news to report, so it might be worth the time.

Last summer, States were asked and they predicted that they would serve an additional over 30,000 preschool children this school year as a result of this new legislation. Many thought this was an over-projection, and many people were pessimistic.

However, we are pleased to report that, based on data we are collecting from the States, this national projection for this year will be achieved and, most assuredly, surpassed. Data from 45 States so far indicates States have increased their services to preschoolers by 29,000 children. We believe this number will only go up before it is finalized as there are additional variables that will need to be taken into account, including States given the option of redoing their count for March 1.

So, we feel we will certainly go over the projections for this year.

Estimates for next year are even more optimistic. States already are predicting over 31,000 new preschoolers for next year.

If both of these years hold true, we feel that within two years, this country will be serving an additional 60,000 preschoolers. The results of this clearly indicate the importance States place and that local school systems and families are willing to get these programs really moving.

However, there are several policy issues that we really feel need significant discussion quickly. I will move to the two that are most important, and the rest are in my testimony for your information.

The first revolves around how the bonus dollars are implemented and given to States. In order to assure that these bonus dollars actually go toward preschoolers who are new and not to children who were previously served under the 89-313 program, OSERS has instituted a formula which uses decreases in the 89-313 program as a correction factor. These decreases are subtracted from any increases that locals and States report in these preschool numbers.

We feel that this is a serious over-correction factor, and States have data through their tracking systems that indicate that in fact the assumption inherent that these children who are leaving the 89-313 program are not in fact transferring into the preschool program.

However, these numbers are used to cancel out growth in the preschool program. The result is that districts have committed significant resources and the increased preschool programs in their communities are faced with having those increases cancelled out by the mathematical formula.

We have expressed these concerns over the past year, and we would appreciate if there is some way attention could be paid to them. We commit our resources and numbers as much as are needed.

The second issue which is a new one and we feel is unintended——

Mr. OWENS. I am afraid I have to interrupt you at this point. You can elaborate during the question and answer period.

Ms. WALSH. Okay, thank you.

[The prepared statement of Sharon Walsh follows:]

STATEMENT OF

SHARON WALSH
ASSOCIATE DIRECTOR
GOVERNMENTAL RELATIONS

THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

TO

THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

WITH RESPECT TO

THE IMPLEMENTATION OF P.L. 99-457

MARCH 30, 1988

Mr. Chairman and Members of the Subcommittee:

My name is Sharon Walsh. I am representing the National Association of State Directors of Special Education (NASDSE). We appreciate this opportunity to present the views of the State Directors of Special Education regarding the major issues affecting the implementation of the two new significant early childhood initiatives enacted in 1986 through P.L. 99-457, the Education of the Handicapped Act Amendments.

Our remarks today will focus on the Part H, Handicapped Infants and Toddlers Program, and the New Preschool Grant Program, the result of an amendment to Section 619 of EHA-B. These remarks represent the consensus views of the State Directors and are the result of 18 months of discussions, meetings, surveys and task force activity with States as they have proceeded to implement these two initiatives.

Upon the enactment of P.L. 99-457, NASDSE established two Task Forces composed of State education agencies special education staff -- The Part H Task Force and The Preschool Task Force. These were created to identify and address implementation issues and to formulate responses to the regulations governing these programs. Ten reports of surveys of state-by-state progress toward the implementation of these initiatives have been developed and disseminated. In the Summer of 1987, NASDSE met with staff at the Office of Special Education Programs (OSEP) and presented two documents "Compilation of Questions and Issues Regarding the Part H Program" and "Questions and

Issues Regarding the Implementation of the Preschool Program". Throughout the first 18 months of these programs, NASDSE staff and task force members have continued dialogue with the OSEP in efforts to resolve implementation issues. Most recently, the two task forces have prepared and submitted NASDSE's responses to the NPRMs for both early childhood programs.

This background is provided to illustrate our involvement and commitment to the success of these programs. To date, we have seen evidence of significant progress in both programs. We will describe some of this progress in our remarks today. At the same time, we want to emphasize that continued success depends greatly on the resolution of a number of major issues and continued federal commitment. We believe these programs are critically important for the lives of young children and their families.

PART H - THE HANDICAPPED INFANTS AND TODDLERS PROGRAM

First, we wish to express our support and excitement for this new program. Although States are only 6 months into the first year of implementation, there are exciting developments to report. This legislation is unprecedented in its interagency and multidisciplinary structure. All States are moving ahead, and although some are proceeding with caution, most are enthusiastic in their efforts to plan and develop a statewide comprehensive system to serve infants and toddlers and their families.

New models of state collaboration are emerging which have great potential for resolving the types of interagency issues which face other populations, such as adults with disabilities. In addition, the increase in prevention efforts and the development of new infant tracking systems starting at birth will allow families greater access to services for their infants and toddlers at an earlier age as well as continued access to appropriate programs as these children grow older.

States already are sharing approaches and strategies with each other as they proceed through the planning and development phases of this program. Formal networking and technical assistance through the National Early Childhood Technical Assistance System and the Regional Resource Centers are facilitating the efficient use of state-of-the-art information. These networks will continue to assist states make the most effective use of the planning and development opportunities available to them while avoiding duplication of effort.

State Interagency Coordinating Councils are meeting and appear to be playing an important part in Statewide planning. Based upon the results of a survey conducted recently by NASDSE and the Children's Hospital in Tallmadge, Ohio 46 states and 4 territories have already had at least one Interagency Coordinating Council Meeting, and over half of these States had met more than once prior to January 1 of this year. More than half the Councils report plans to meet more than the required 4 times per year.

Most States are in the process of determining the definition that will be used by the State for "developmental delay". According to our survey results, 11 States have developed an official State definition for this population. In addition, 14 States have decided that infants and toddlers who are "at risk" will be served while several others report that services to "at risk" children will be provided on a pilot basis in order to determine future state policy.

States report spending significant portions of the State's Part H award for planning and development activities in keeping with Congressional expectations. These funds are being used for, among other things, grants to communities to pilot and develop model projects and to design and implement local collaborative interagency efforts to serve children below the age of three and their families. In 34 states, some portion of the Part H award is being used to expand the provision of direct services within the State.

States are embarking on a new and challenging interagency collaborative effort. We are hopeful that many issues related to family involvement, case management, transition and monitoring, can and will be resolved by the States over the next several years. However, there are several problematic issues, directly attributable to the interagency nature of the program, that will be much more difficult to resolve and, in addition, will require federal leadership. We would like to elaborate on a few of these problems.

Financing. Determining how services to be provided under the Part H Program will be financed is proving extremely difficult to resolve and has created conflict at the State and community levels. For example, it is difficult to determine which agency should be responsible for a given service, and under what circumstances private funds should be included in the system. Several States have reported to us that funds from other programs which have previously been used to support early intervention services are being withdrawn. These funds - e.g., Title XX, Title V and Medicaid - are being redirected from early intervention to other priorities. While the lead agency was intended by Congress to assure that various State agencies share in the financing of Part H services, the ability to compel interagency participation is often beyond the organizational authority of the lead agency.

Confidentiality of Information. Issues surrounding the confidentiality and the release of information among agencies has proven to be a major problem for States. For example, in some States, agencies refuse to share client records and information under any conditions, citing Federal and/or State prohibitions. In these States this is a major barrier to the effective interagency coordination of service delivery. If client information and records are not shared across agencies some services will continue to be duplicated (e.g., assessments) and some children and families still will fall between the cracks of the service delivery system.

We feel strongly that federal involvement in resolving these two problems will be of significant value to States as they continue the interagency collaboration necessary to assure the success of this program. We believe that assistance in at least these two areas could be provided by the new Federal Interagency Coordinating Council (FICC) authorized by PL 99-457. We are pleased to see that the Council has already met several times and that their initial agreement signed last Fall indicates they will provide a "national model for interagency linkages" and will "mirror the role Congress has stipulated for the State Interagency Coordinating Council, complementing and supporting their efforts"

A unified message from all federal agencies to their State counterparts must be delivered. The FICC's role as a federal model for State interagency collaboration is critical to the success of State efforts. Therefore in this regard we recommend the following:

o The FICC should include representation from both State agencies and families, as major constituents and consumers of the Part H program, in order to assure the availability of valid and reliable information about the issues being faced at the State and community levels;

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- The FICC should have representation from the Health Care Financing Administration in order to assist in the resolution of complex financing issues; and

- The FICC should immediately address the two issues outlined above. We recognize that these two issues, particularly financing, are complex and will not be resolved quickly or easily. However, attention to these issues and their ultimate resolution at the federal level will go a long way toward assisting States to achieve success in implementing the program.

THE PRESCHOOL PROGRAM

Last summer States predicted there would be an additional 30,665 children served in school year 1987-88 because of this legislation.

Many thought this to be an over-projection. There was pessimism because of the circumstances surrounding the late start-up of the program. For example, regulations had not been proposed, application packages were not issued until late June, and funds were not awarded to some States until September.

We are pleased to report that -- based upon data we are collecting from States -- this national projection of 30,665 additional children will be achieved and, most assuredly, surpassed. So far data from 45 states indicates an increase of 29,000 children. (The numbers these States report are preliminary and subject to adjustment based upon States' verification of the data). Additional children are expected to be reported by the 10 jurisdictions from whom we have not yet heard. We believe this number will increase further when the additional children served between December 1 and March 1 are reported. Approximately 20 states have elected to submit the optional March 1 revision of their preschool count authorized by Congress recently.

Our estimates for next school year (88-89) are even more optimistic. Forty-five (45) States reporting data to NASDSE so far estimate they will serve at least an additional 30,900 children next year (88-89). If both years' projections are realized more than 60,000 new preschool children will have received services during the first two years of the program. This figure is well above the estimates projected by Congress and the Department when PL 99-457 was enacted.

The results of the first year of implementation of the preschool program, along with estimates of continued growth next year, demonstrate clearly the importance States place on preschool education, and the willingness and readiness of States and local school systems to expand services to meet the needs of 3-5 year old children with handicaps.

However, there are a number of policy issues which must be resolved related to the program. For example, Section 300.300 of the Part B regulations requires States and/or local school systems which serve over 50 percent of the population in a given disability in a given age range to serve all such children. Thus, States or local districts proceeding to increase services to preschool children over the three year implementation period provided by Congress in PL 99-457 will find themselves out of compliance with PL 94-142 when they serve more than 50 percent of their preschool population. The continued existence of this regulation, which is in direct conflict with the intent of PL 99-457, is a major disincentive to continued growth under the preschool program.

In addition, clarification is needed regarding the rules that will govern the continued provision of State and local preschool programs after 1991 for States which are unable to enact a mandate. While States recognize the financial sanctions they would experience in the absence of a mandate by 1991, in order to effectively plan now for continued preschool service delivery, they need to know soon the requirements and restrictions under which service delivery will operate.

These and other policy issues have been brought to the attention of the Department but are not addressed in the draft regulations of either Part B or Section 619. We strongly urge the Department to resolve these critical policy issues. NASDSE is anxious to assist the Department in any way possible to assure their rapid resolution.

We will focus the remainder of our comments on one fiscal and one administrative issue which we believe represent serious unintended disincentives to States and local school systems. Unless resolved, these issues may counteract or even negate the success achieved thus far in the preschool program.

1. Calculation of the Bonus Award Using Decreases Under the Chapter I (ECIA) Program (PL 89-313). In order to assure that bonus dollars available under the preschool program are not awarded to States for preschool children who had previously been served under the 89-313 program, OSEP developed a formula which utilizes decreases in the 89-313 count as a correction factor in determining a State's growth in the number of preschool children served. NASDSE is strongly opposed to this procedure. We have communicated our concerns on this in both our response to a request for comments on the Department's proposed forms and procedures for estimating growth, and most recently in our response to the NPRM which proposes to incorporate this administrative procedure into the regulations.

The OSEP formula assumes that any decrease in the 89-313 preschool count can be accounted for by increases in the Part B preschool count (i.e., that States would intentionally count children transferred from the 89-313 program to the Part B program in order to receive the higher bonus dollars). This formula does not take into account the natural attrition that occurs in the 89-313 program. In reality, children leave the 89-313 program for many reasons other than to transfer to the Part B program. For example, some children move out of the State, while others leave special education. Use of this formula has resulted in inappropriate cancelations of growth in the new preschool program. Many states report they can document through their child tracking systems that the majority of children leaving the 89-313 program do not transfer to Part B. In such cases, OSEP's procedure has penalized districts which, in good faith, have begun or expanded programs for new children. For example, in Colorado, the 89-313 preschool program decreased by 100 children between October 1, 1986 and October 1, 1987. This decrease is attributed to two factors. First, as expected, the five year old children "aged out" of the preschool developmental day programs funded with 89-313 dollars. Meanwhile, consistent with the intent of PL 99-457, local school districts began serving significant numbers of the State's three year old population who in previous years would have entered the State's 89-313 funded developmental day programs. Thus, the five year olds who aged out of the program were not replaced by new three year old children, accounting for the 100 children decrease in Colorado's 89-313 count.

This year, Colorado's special education preschool program increased by 645 children over last year. The State's child tracking system has demonstrated that none of these new children transferred from the 89-313 program. So, while Colorado school districts increased their service delivery capacity by 645 children this year, OSEP's formula recognizes an increase of only 545 children. Based on this, OSEP will award "bonus" dollars for 545 children while the State must distribute bonus money to districts for 645 new children.

The 100 children "lost" through the use of OSEP's formula, in fact, represent legitimate additions to the State's special education preschool program. Through the use of OSEP's formula, the State is, in effect, penalized twice. The 100 children were never served under 89-313 and, therefore, did not generate the approximately $700 Colorado receives per child under the 89-313 program. In addition, these children are not eligible for the bonus award as newly served children under the special education preschool program. Local districts who invested considerable resources to expand their service delivery capacity and planned on receiving their "pro rata" distribution of bonus money based on 645 children, will now receive proportionately fewer federal dollars.

As NASDSE has previously suggested, the prohibition against receiving bonus dollars for children transferred from the 89-313 program to the preschool program is a compliance issue. States can assure that such transfers are not counted for the purpose of determining the bonus award under the preschool.program. The issue is one of compliance and can be monitored as such by OSEP. It should not be reduced to a simple mathematical formula which cannot account for the dynamics of State service delivery systems.

2. Distribution of the "Bonus" Dollars. The statutory intent of the $3800 bonus award for every new child served is to provide an incentive to districts to begin serving preschoolers with handicaps. This amount was based upon estimates of the cost of serving a preschool child with handicaps and was intended to alleviate a district's start up costs for new programs. We believe the realized and projected increases in the 3-5 count, described above, demonstrate the effectiveness of this incentive.

The funds available under this bonus provision are to be distributed to districts on a "pro-rata" basis to assure that the money serves as an incentive for local program development. However, we are beginning to feel the effects of what appears to be a conflict within the law regarding the distribution of bonus funds to the States and, within the States, to local school districts. Bonus funds are awarded to States based on "net" growth in the number of children served. States, in turn, are required to distribute these funds on a pro rata basis; that is, districts are to receive bonus funds based on the actual number of new children they serve. This State and within State distribution arrangement, in and of itself, is not problematic as long as the statewide and within community population remains constant or increases uniformly across the State.

The problem arises when either the State's population as a whole decreases or when some communities increase their population while others decreases resulting in little or no net growth in the preschool program statewide. While the statewide preschool count may show little or no net growth, individual school districts may have significantly increased the number of preschool children served. Therefore, while the State receives its total award based on a smaller number of children, a school district is entitled to receive a per child allocation based on actual increases in the number of children it serves. In some States, this phenomenon has resulted in a within state distribution of $200-300 per child rather than the $3270 per child awarded to the State. The following examples illustrate this problem.

In Montana, 306 new children were served by local districts this year. These districts expended significant resources to hire staff and buy the equipment needed to expand services to these new children. At the same time, the State experienced a significant population decrease, primarily due to economic factors in some of the State's communities. While some local districts increased their preschool population, others experienced significant decreases. As a result, the net growth in the preschool program statewide was only 16 children this year. Thus, Montana is eligible to receive bonus funds for only 16 children. The State must, however, distribute bonus dollars generated by 16 children to districts which added 306 new children to their enrollments. These districts will receive only $145 per child, a small fraction of the $3270 per child allocation they expected to receive.

A more disturbing situation is facing the State of West Virginia where 17 local districts added 88 new preschool children this year to their programs. Thirty other districts in the State experienced a decrease of 270 preschool children. Therefore, the State of West Virginia is entitled to no bonus award, yet is expected to allocate bonus dollars to the 17 districts that increased their preschool population. You can imagine the frustration of local school systems and the families they serve as they now realize that the federal funds they had planned on to assist in the financing of program expansion will not be available.

States, too, are frustrated over their inability to adequately finance local growth as planned. In some cases, States will be redirecting discretionary funds originally targeted this year for such critical needs as inservice training and model development. Instead, these discretionary dollars will be provided to local districts to help offset the loss of bonus funds they expected to receive for direct service delivery for children. This seems to us an unfortunate but necessary solution which will undoubtedly have significant programmatic consequences.

We are collecting data from States to determine the extent of this problem. So far, we know that it affects at least 10 and probably more States. We have begun discussions with Congressional staff and the Department to explore alternative solutions to this problem.

We believe the issues we have brought before you today are not insurmountable, and can and must be resolved. We further believe that resolution of these issues can only occur through a strong partnership between Congress, the Department and the States. NASDSE continues its commitment to this partnership, and is prepared to assist in any way possible. We would be happy to provide any additional information you may require.

We feel compelled to emphasize one remaining issue that has implications for States' ability to serve all children with handicaps from age three. As you are well aware, State and local education agencies believe that the federal financial partnership promised in PL 94-142 has never been fully realized. Although all states participate in the program, the federal promise of providing 40 percent of the national average per pupil expenditure has not materialized and the federal share has rarely reached 10 percent. This experience has caused States and school systems to be naturally skeptical about the future of the federal partnership in the preschool program. They are watching carefully the level of federal appropriations for this program. The FY 87 federal appropriation was encouraging because it was consistent with Congress's authorization level for the program. We are appreciative of the efforts of many members of Congress during the FY 88 appropriations process to continue the program's support. Even though FY'88 did not reach the authorized or needed level of funding, relative to other programs the final appropriation was a strong signal of Congress's support for this program in light of our country's continuing deficit problems.

We are very concerned about FY 89 and beyond. The President's request for $205 million for FY 89 falls far short of the $275 million needed to continue and to expand services. The $275 million is critical to the success of the program, particularly in light of the numbers of children being identified and projected to be served across the country in the next few years. As you may know, California has recently passed a mandate starting at age three which is contingent upon continued federal appropriations for this program at the authorized levels. Other states are considering the inclusion of a similar provision in their preschool mandates.

We appreciate the opportunity to share our perspectives with you on States' progress in implementing PL 99-457.

Mr. OWENS. Mr. Gerry?

STATEMENT OF MARTIN H. GERRY, ESQ., PRESIDENT, POLICY CENTER FOR CHILDREN AND YOUTH

Mr. GERRY. Thank you, Mr. Chairman.

First, let me express my appreciation for the opportunity to testify, and I have an extensive written statement which I will try to summarize briefly.

I think there are three basic points that we need to make, and Dr. Bellamy and Mrs. Will, I think, have paved the way in terms of explaining much of the system. I won't do that.

First, I believe that there are significant compliance problems existing at the local level for children in the country and that the question that has to be addressed by the monitoring system that is now in place is, to what extent is it efficiently identifying and correcting those problems? However, I think they are there.

Now, there are two levels of monitoring that have been explained, the State level and the Federal level, and I am going to direct most of my comments to the Federal level, but I think it is important to point out two major shortcomings in State monitoring which I believe that the Federal office has not adequately responded to in terms of its reports and also, I think, to some extent, in terms of its technical assistance.

The two major problems that I perceive at the State level are the absence of measurable operational standards, and while I think the Department has increased and has done a good job of putting more pressure on the States to develop policies, I don't think most of those policies would meet what I would describe as a test of measurable and operational, and I describe in my testimony what those tests are. I won't go through them now.

Secondly and at least as important, the idea of monitoring that has been developed with respect to the States implies the concept of a continuous collection and analysis of information, not a one-shot visit to a local school system. We still have, I think, major confusions with respect to the concept of monitoring as a continuous process and not as something that is done every so many years by somebody showing up somewhere, staying for a certain amount of time, and leaving.

That involves, I think, at the State education agency level some serious redesign of management information systems. There needs to be serious discussion and increasing discussion at the State level about the relationship between monitoring and management information. Again, that is discussed much more in my testimony.

Now, I served as a member of the task force that Dr. Bellamy referred to that met last summer and was elected by its members as their chair. I am not sure what all of the prerequisites of this honor were, but I think one of them is probably that I feel an obligation to at least communicate what I think are some serious problems that the monitoring task force identified. As a group, as Dr. Bellamy described, it involved people from State and local education agencies, parents, advocates, pretty much a cross section of individuals interested in the problem.

In my testimony, I have listed six basic findings that the group arrived at, and these were communicated to OSERS. I think in each case there still needs to be some attention to them.

The first is the failure to develop sufficient measurable and operational compliance standards at the Federal level. Now, I just said that there is a problem at the State level, but there is an equally serious problem at the Federal level which is the proposition that if you are going to monitor anybody, you have to basically set forth what behavior you expect, and then you can go out and see whether the behavior is there, and then you can draw a conclusion.

The Federal Department of Education started down its process, as I point out in my statement—Dr. Rostetter certainly knows more about the details of that than I do—but went through a process of attempting to do that and developed some draft monitoring documents that did have standards in them.

Those standards were the source of a great deal of objection, discussion, and political pressure on the Department, and I think that is probably inevitable.

Mr. Owens. Objections by whom?

Mr. Gerry. Objections by primarily the State education agencies who, in some cases—I don't mean all of them, but some of them—questioned the Department's authority to even develop the standards which I think is fundamentally wrong. I think the Department has the authority to do it.

Having run a very large civil rights operation myself for several years, I don't know any way you can monitor anybody without either explicit or implicit standards. In other words, I think every civil rights enforcement agency—and I think that is what we are talking about here—has to develop some kind of measurable policy guidance on what it is going to determine to be a violation and what it is not going to determine to be a violation.

You can either publish those as OSEP tried to do and invite extended discussion which I think is a good thing and which is what the Department tried to do, or you can just not publish them and do them on a prosecutorial method which is the way OCR has always done it, in my experience, which is weathering through each case—like the Justice Department or OCR—you interpret the law in each case, but in every event, you can't reach a finding of compliance or non-compliance without translating the law into some kind of measurable operational standard.

Now, what happened when the Department tried to do that and moved ahead in several areas was there was a great deal of objection, and the Department, I think, at one point went through a process of trying to bring everybody together and move on finalizing those standards which I think is a good idea but, at some point or another, abandoned that effort. I can only speculate on why, but I think it was a serious mistake and I think it undermines the effectiveness of any serious enforcement activity.

Now, I think some of the questions that were asked earlier today about enforcement, to some extent, always come back to the solid or not so solid nature of findings. Many of the objections of the States also come back to the quality of the work that is done, and, again, I think standards are an important part of that.

The second finding that the work group identified was the failure to target OSEP's monitoring resources on those SEA's and those compliance issues where violations are most likely to be occurring. The office that I headed had 1100 investigators and 200 attorneys. We could not—and I don't think that office today could—go out and investigate in a serious way one-third of the States' compliance with Public Law 94-142.

In every area of compliance responsibility, there are literally hundreds of obligations in the statute. It is not feasible, nor is it, I think, particularly productive.

Like every other compliance, I think, has to do, I think OSEP needs to select its targets. It needs to target its monitoring. It needs to try to find out what the most serious problems are.

I think the days of having to go out and raise the flag in every State are over. I think the States know the law is on the books. I think they understand in general the responsibilities, and I think it is more useful to use staff to do that.

I don't think OSEP has sufficient staff right now and other resources to even do that, and I would be happy to give you my views on how many resources they might need, but there are not enough people, quite frankly, and I think that also becomes part of the problem of justifying the system.

The third thing is that there has been a lack of adequate preparation before the conduct of on-site compliance monitoring. Mrs. Will mentioned some, I think, positive changes that have been made in that respect, and I know Mr. Bartlett alluded to that in a couple of his questions. I think still improvements could be made, and in my written statement, I have outlined a few of the specifics that the task force came up with.

The fourth is the use of inadequate and inappropriate information collection and analysis procedures, and this particularly disturbs me. For reasons that I think are somewhat complicated, the Department went through a process in the last two years of relying less and less on interviews with both parents and with State and local school personnel. I think that is a mistake.

From my experience as a lawyer working in civil rights, interview data is usually more useful, not less useful, than documentary data, and the notion that you are going to find smoking gun documents lying around in which people say they are violating any of these requirements is not a very realistic expectation.

Yet, I think interviews can often produce very important data and should be relied on and used much more than they are being used.

The fifth is the failure to involve parents and other interested organizations in the discussion of compliance findings and in their resolution. Again, this was brought out in part during the testimony of Mrs. Will, but I think that two points need to be made.

One, the way the draft report mechanism works, the States have an opportunity—and I think it is appropriate—to respond to some of the factual findings that the Department has made. However, parents and other interested individuals never have a similar opportunity to respond.

What if the Department has overlooked information or has failed to find information it should have found? That is a big gap in the system. Obviously, the States are unlikely to point out those omissions.

So, if you are going to have a draft process which I think has its own problems, then I think you have to involve everybody in the opportunity to comment. That is not done.

Finally, I think Dr. Rostetter's testimony describes this in much greater detail, but there are serious delays, as you discussed earlier, Mr. Chairman, in the process of making findings. I happen to think that problem is linked to the other five, or at least most of the other five.

I think the reason for the delays is not administrative unwillingness but a lack of solidity in the process. What happens is that if you don't have standards and your findings are not well developed and your information collection isn't too good and you haven't expanded the process, then you may not be too anxious to send your letters out. So, I appreciate the opportunity to testify and would be happy to answer any questions.

[The prepared statement of Martin H. Gerry follows:]

BEFORE THE SUBCOMMITTEE ON SELECT EDUCATION OF

THE COMMITTEE ON EDUCATION AND LABOR

OF

THE HOUSE OF REPRESENTATIVES

Statement of Martin H. Gerry

March 30, 1988

STATEMENT OF MARTIN H. GERRY

Mr. Chairman and Members of the Select Education Subcommittee, let me first express my appreciation for your kind invitation to present testimony before the Subcommittee regarding the future of Federal rehabilitation programs. Mr. Chairman, in my testimony today I would like to describe in some detail the nature of the SEA compliance monitoring role, examine current problems in the operation of SEA compliance monitoring systems, and then address the effectiveness of current OSEP compliance monitoring activities under Part B of the Education of the Handicapped Act ("P.L. 94-142"). Before addressing each of these matters, it might be helpful to briefly outline my background and experience relevant to the conclusions which I have drawn and the specific recommendations which I will make. I have also attached a copy of my personal vita.

Background and Experience

I am a lawyer by training and from 1969 to 1977 I served in a series of positions within the Department of Health, Education and Welfare. From 1969-70, I served as Executive Assistant to the Director of the Office for Civil Rights and from 1970-73 as a Special Assistant to two HEW Secretaries. In 1974, I was appointed Deputy Director of the Office for Civil Rights and in 1975 became Director of the same office and remained in that position until January of 1977. As Director and Deputy Director of the Office for Civil Rights I was responsible for the enforcement of Title VI of the Civil Rights Act of 1964 in all Federally supported education and rehabilitation programs and was closely involved in the formulation of HEW regulations to implement both Section 504 of the Rehabilitation Act of 1973 and P.L. 94-142.

Since leaving the Federal government, I have been actively involved in a wide range of activities directly related to ensuring equal opportunity for persons with disabilities. During this period I have served as the project Director for a three year, Federally supported grant to train SEA special education compliance monitoring staff and have provided consulting assistance to over forty-five State education agencies on the development and implementation of policies and programs (including compliance monitoring systems) to implement the requirements of P.L. 94-142. During this period I have also served as pro bono legal counsel to more than ten national parent and disability rights organizations and in August of last year I was asked to serve as a member of the Task Force on Monitoring established by the Office of Special Education Programs to review and comment on the OSEP compliance monitoring process. I was subsequently elected by the members of the Task Force during its August 26-27, 1987 meetings to serve as its Chair for purposes of any ongoing activities.

SEA Compliance Monitoring Under P.L. 94-142

Under P.L. 94-142, a discrete and important "partnership" role has been established for the SEA in the administration of the overall program. The primary responsibility of the SEA for monitoring the effective implementation of Federal and State requirements at the local level is, in fact, a hallmark of the P.L. 94-142 legislative scheme. Section 612(6) of the Act provides that the SEA shall be responsible for assuring that the requirements of this part are carried out. EDGAR contains specific provisions requiring that each SEA adopt and use a method for monitoring "agencies, institutions and organizations responsible for carrying out" the EHA-B program. In order to fulfill this responsibility, each SEA must implement a method of monitoring which includes the following three components:

> (a) The continuous collection and analysis of information sufficient to determine compliance of all special education programs administered in the State with applicable State and Federal requirements.

(b) The correction of each deficiency identified in program operations (non-compliance with an applicable State or Federal requirement).

(c) The enforcement of State and Federal legal obligations by imposing appropriate sanctions when any special education program administered in the State fails or refuses to correct a deficiency. (34 C.F.R. 300.194; 76.101(3)(i); 76.783).

As contemplated by OSEP and by the EDGAR monitoring requirements, SEA compliance monitoring should consist of seven interrelated activities:

(1) Planning and organizing compliance monitoring activities, including planning overall SEA information collection and analysis, targeting individual LEAs for compliance monitoring activities, and selecting compliance issues for priority investigation;

(2) Identifying sources of information needed to carry out compliance monitoring activities with respect to a particular LEA (addressed to identified compliance issues), including information routinely reported to the SEA, information maintained by LEAs in records and other documents (e.g., IEPs), information obtainable from LEA staff or from parents and information only available from experts;

(3) Developing the instruments necessary to collect information in a legally supportable fashion, including data collection forms, written requests for information, formats and procedures for extracting information from records, and structured interview forms;

(4) Collecting information off-site and on-site, including organizing and storing information, extracting information from records and other documents, interviewing LEA staff and parents, and collecting information from experts;

(5) Communicating compliance monitoring findings, including the structure and content of letters to LEAs, requests for corrective action, procedures for explanation or rebuttal and timeframes for action;

(6) Conducting voluntary negotiation with LEA administrators, including explaining the content of compliance monitoring findings, reviewing explanations or rebuttals offered by LEA staff, discussing corrective action approaches and reaching agreement on the content of corrective action plans; and

> (7) Identifying, facilitating and providing technical assistance to LEAs in the development and implementation of corrective action strategies and plans.

These seven basic activities also describe the system which OSEP has announced it will use to conduct its compliance monitoring of SEA activities.

Current Problems in SEA Compliance Monitoring

OSEP letters sent to SEAs during the past three years regarding deficiencies in their compliance monitoring systems document the existence of two central problems in the overall operation of SEA compliance monitoring systems: (1) the absence of measurable, operational monitoring standards; and (2) the systematic collection and analysis of information regarding the actual provision of services to handicapped children within specific classrooms, schools and school districts.

(1) The Absence of Measurable Operational Monitoring Standards

Reports summarizing the results of OSEP monitoring of SEA administration of the P.L. 94-142 program have frequently identified serious deficiencies in SEA compliance monitoring systems directly attributed to the failure of SEA compliance monitoring systems to develop measurable operational monitoring standards and procedures. Apart from the sixteen Federally mandated "State Plan" policies and procedures, the complex operating reality of local school systems has increasingly created demands for SEA policy development activities addressed to the numerous practical questions which are not addressed by the Federal statute and regulations. Proper performance of SEA administrative responsibilities, particularly those involving compliance monitoring, complaint investigation and local application review, also requires the use of measurable, operational standards.

The premise underlying this OSEP definition of SEA State Plan policies is that if SEA special education policies are to be successful in executing the administrative plan of the statute and useful to local school systems and to parents, they must be stated in language that is readily compatible with the realities of day-to-day program operation and they must be responsive to the range of practical problems of application which actually arise in local school systems. In this context, a policy or procedure is a statement which explicates or translates a particular statutory or regulatory requirement into a measurable and operational standard. In addition, these same policies and procedures must contain standards for the behavior of local school staff which can be easily reviewed in order to ensure effective, ongoing management. The close tie between measurable, operational standards and effective management is clear. Once behavioral expectations are established, SEA administrators and staff can design a management information system to determine on an ongoing basis, internal or external, whether behavioral expectations established by policies or procedures are being met.

When monitoring standards are expressed in measurable and operational terms, not only is SEA compliance monitoring enhanced but effective local administration and self-evaluation becomes possible. Where SEA monitoring standards are nonexistent or where standards have not been expressed in measurable, operational terms, neither school districts nor parents are given "fair notice" of the behavior of LEA officials and parents that is expected in order to implement various State and Federal requirements. Absent this type of effective communication, protracted legal disputes concerning the "rules" or "standards" can waste hundreds of hours and thousands of dollars that would otherwise go to improving special education services. From the LEA perspective, it is virtually impossible to be sure that local staff are complying with an abstract principle expressed in conclusory terms. For example, an SEA policy which requires that a school system may only remove a child from the regular education environment only "when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" without defining any of the terms crucial to the determination (e.g., "education", "achieved satisfactorily", "regular educational environment") or describing how an IEP Committee is to determine whether the reason for the child's educational "failure" in the less restrictive setting was due to the handicap rather than a variety of other factors (e.g., curriculum, instructional methodology, poor health or attendance) provides an LEA with no basis for self-evaluation and the SEA with no standard against which to monitor. Thus, from both a practical and conceptual standpoint, SEA policy making, compliance monitoring and effective day-to-day management are interconnected.

The concept of "measurable" policy is one in which the prescribed or proscribed action or event is one that can be measured, i.e., the occurrence or non-occurrence of the action (event) can be objectively determined or measured. Thus, policies or procedures requiring changes in attitude (e.g., the value of early intervention) are rarely measurable, whereas required changes in behavior (e.g., use of comprehensive assessment procedures to assess the needs of infants and toddlers) are generally susceptible to measurement. In order to be operational, an SEA monitoring standard must meet four (4) basic criteria. First, the policy must be comprehensive, i.e., it must address each of the legal obligations created by the underlying law or regulation. Nothing creates more confusion for local special education administrators and parents than fragmented policy making which creates constant insecurity and the need to identify and simultaneously consult several different Federal and State regulations and policy documents in order to understand the overall legal responsibility.

Second, the monitoring standard must define or clarify any undefined terms or concepts inherent in the underlying legal or regulatory environment. For example, in the the language from the EHA-B Regulation governing placement in the least restrictive environment cited above, the undefined terms (e.g., "education", "achieved satisfactorily") must be defined and a method for determining the relationship, if any, between education which is not achieved satisfactorily and the nature or severity of the child's handicap must be presented. Third, monitoring standards must communicate behavioral standards in a manner which allows building level administrators and parents to readily understand what is expected within the day-to-day operation of the system and should identify and relate to the basic educational structures and procedures which form the framework for local decision-making.

(2) The Absence of Continuous Collection and Analysis of Information

OSEP monitoring letters have made clear that SEA special education monitoring activities must involve a continuous and dynamic review of information submitted by LEAs to the SEA which bears directly on compliance with P.L. 94-142 requirements and State standards. OSEP Reports have frequently contained findings that SEAs do not, in fact, use such a continuous and dynamic monitoring process.

The information which must be analyzed by an SEA to form a sufficient basis for determinations of compliance include information provided from the each of the following sources:

> (1) The annual LEA applications for P.L. 94-142 funds;
>
> (2) Other information routinely provided to SEA special education units regarding special education program operations which can be readily used as a basis for identifying atypical patterns of eligibility determinations, service provision and classroom and school placement;
>
> (3) "Management information" routinely submitted by LEAs to SEA units outside of special education, including information submitted in support of requests for State financial assistance, information regarding special education staff qualifications and training, the results of SEA program evaluation activities, plans for construction of "regular" and "special" facilities and information regarding the nature and success of "regular education" intervention strategies for students with serious learning or behavioral problems;

(4) Information provided by parents of handicapped children through unresolved disputes with LEAs (e.g., due process hearings, complaints, litigation), and testimony in public hearings and before State advisory panels;

(5) Information derived directly from SEA special education administration including compliance monitoring, program evaluation and complaint investigation activities;

(6) Information "specially requested" by an SEA as part of an off-site compliance review; and

(7) Information collected during on-site compliance reviews.

Due process hearings and Federal and State court decisions often create the impetus for changes in SEA compliance monitoring activities, and many SEAs have established formal or informal "advisory" groups composed of influential local special education administrators and/or parent-advocates to provide assistance in the formulation of politically acceptable changes in those activities. SEA Compliance monitoring priorities and findings should, thus, be based on the continuing analyses of "data" reported from each of these sources.

The Effectiveness of OSEP Monitoring Activities

Based on the discussions held by the OSEP Monitoring Task Force and on my own analysis of current OSEP compliance monitoring activities, I have concluded that, while substantial progress has been made during the last two years in several important procedural areas (particularly in the standardization of reporting procedures and the reduction of time delays), several important problems continue to significantly reduce the effectiveness of OSEP overall compliance monitoring activities. These problems include:

(1) The failure to develop sufficient measurable, operational compliance standards to support OSEP monitoring of SEAs;

(2) The failure to target OSEP monitoring resources on those SEAs and those SEA compliance issues where violations are most likely to be occurring;

(3) The lack of adequate preparation before the conduct of on-site compliance monitoring;

(4) The use of inadequate and inappropriate information collection and analysis procedures;

(5) The failure to involve parents and other interested organizations in the discussion of compliance findings and their resolution;

(6) The failure to develop an effective procedure for finalizing reports and accepting corrective action plans.

Each of these problems is discussed separately and briefly below.

(1) The Failure to Develop Sufficient Monitoring Standards

Mr. Chairman, for the reasons discussed at length above with respect to SEA monitoring of local compliance, the overall effectiveness of OSEP monitoring of SEAs depends directly on the ability of OSEP to translate the current statutory and regulatory requirements governing SEA administration of the P.L. 94-142 program into measurable and operational standards. For example, the EDGAR provision requiring that each SEA adopt and use a proper method of monitoring hardly provides a working definition of what activities SEAs are expected to carry out and what standards they are expected to follow. Without such a translation, it is difficult to foresee how OSEP can enforce major improvements in SEA compliance monitoring practices.

In 1984, OSEP publicly announced its intention to develop monitoring standards in each of the areas of SEA administration which form the subject matter of its State compliance reviews (e.g., review of local applications, complaint investigation). Soon after the first of these standards were circulated in draft form, several SEAs challenged OSEP's authority to issue monitoring standards. As a result of this challenge, my impression is, Mr. Chairman, that OSEP abandoned much of its standard development activities. The OSEP Monitoring Task Force expressed the view, with which I strongly concur, that

OSEP should immediately return to its standard development activity and should respond to SEA objections by publishing its standards for review and comment. Based on my own experience with civil rights enforcement, I believe that weathering the various objections which may be raised is far preferable to abandoning the "translation" activity which inevitably must form the basis for any serious enforcement posture.

(2) The Failure to Effectively Target OSEP Monitoring Resources

At present OSEP conducts compliance reviews of SEAs on a cyclical basis linked to State Plan submission and thus each SEA is "monitored" once every three years. In my view the failure by OSEP to target its current resources on SEAs where compliance problems are most likely and on those specific compliance issues where available information suggests the greatest deficiencies exist is a serious flaw in the current OSEP system. The OSEP Monitoring Task Force expressed the view that OSEP lacks sufficient staff to conduct effective monitoring of SEAs on its current schedule and recommended that OSEP follow the same general procedure for targeting its monitoring activities that it requires SEAs to follow.

(3) The Lack of Adequate Preparation Before On-site Monitoring

The OSEP Monitoring Task Force recommended several important changes in the process used by OSEP to schedule and prepare for monitoring visits. These changes include:

> (1) The development and distribution of a proposed annual monitoring schedule to allow all interested groups, including SEAs, State Protection and Advocacy agencies and parent organizations, to express their views regarding monitoring priorities;
>
> (2) The provision of sufficient advance notice to SEAs to be monitored (at least 90 days) and to LEAs being visited as part of the monitoring visit; and

(3) The structuring of an improved process for advance consultation (i.e.,an ongoing system of information collection) with parents and interested organizations regarding monitoring priorities and any underlying, systemic problems;

(4) Inappropriate Information Collection and Analysis Procedures

The OSERS Monitoring Task Force identified several important problems related to the current collection and analysis of compliance information by OSEP monitoring staff, including the failure to conduct interviews with parents and SEA staff as part of the on-site monitoring process, the absence of any parent survey procedures, the need to develop a plan for data collection keyed to measurable monitoring standards, and the failure to appropriately coordinate the analysis of information during the review of State Plans with subsequent monitoring activities. In addition, the Task Force recommended that OSEP be more selective in determining the compliance information to be collected and develop standards for reliably "sampling" important client information from the local level.

(5) The Failure to Broaden the Discussion of Compliance Findings

The OSEP Monitoring Task Force expressed serious concern regarding the current procedures used by OSEP to communicate compliance findings to SEAs. Under the present approach "draft" reports are sent by OSEP to the SEA for comment and "clarification" prior to the issuance of a "final" report. Parents and other concerned individuals and organizations are not currently involved in the discussion of OSEP findings and, thus, unlike the SEA, have no opportunity to correct errors or omissions in the monitoring report. Similarly, LEAs visited by OSEP monitoring teams are also not currently permitted to respond to "draft" reports.

(6) The Ineffectiveness of Procedures for Finalizing Reports and Plans

Members of the OSERS Monitoring Task Force expressed major concerns regarding the protracted delay experienced by SEAs and parents in the receipt of final OSEP monitoring letters and in the approval of corrective action plans. Task Force members suggested that some of the current delay could be eliminated by streamlining the format of reports, separating findings regarding "policy" deficiencies from findings regarding implementation plans and significantly reducing the number of internal Department of Education clearance reviews.

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Mr. Chairman, let me again express my thanks to the Subcommittee for my opportunity to present testimony on this important subject. I would be happy to answer any questions which the Subcommittee may have.

Mr. Owens. Thank you.

Mr. Rostetter?

STATEMENT OF DAVID ROSTETTER

Mr. Rostetter. Thank you, Mr. Chairman.

I also appreciate this opportunity.

I believe that my experience perhaps qualifies me uniquely to give some facts and opinions to the subcommittee. Prior to August 1, 1986 when I resigned from the Department of Education, I was the Branch Chief and, at one point, the Division Director that administered EHA-B and was responsible for the implementation of all monitoring requirements.

As such, I designed the two most recent monitoring systems used by OSEP. I think that insight will allow me to give a bit more detail to some of Martin's criticisms that I heard.

I think it is fair to set forth two questions about the effectiveness of OSEP monitoring. One is basically, do they have an effective management system and the resources necessary to carry out the responsibility? Number two is we should establish what a proper method of monitoring is and compare their performance against that standard.

In terms of management and resources, I want to say the following. Monitoring is a difficult job. It often leads to controversy. The issues are volatile. The disputes internally and with the States often involve political determinations and decisions that get bucked up the line, et cetera, et cetera.

In fact, monitoring under this Administration is a unique event. Enforcement of any civil rights act appears to be a unique event.

What we have going on in OSERS right now and over the past four years since 1983 is a situation which does not create the security and the environment necessary for individuals who monitor to carry forth their cases. Let me give you some data.

Since March of 1983, there have been six directors of the Office of Special Education Programs, seven deputy directors, five different division directors of the Division of Assistance to States. This is not the kind of security that I as a branch chief needed when I tried to enforce the Education of the Handicapped Act.

Additionally, the branch chief position was vacant for 18 months after my departure. A new branch chief was appointed very recently.

Above the branch chief level, the division director, the director of SEP, the assistant secretary's office, there is no individual with any experience in the administration of the Education of the Handicapped Act at the Federal, State, or local level.

Additionally, the monitoring staff have several individuals who are not employed under the civil service protections. They are administratively determined positions, AD positions we call them, which are not subject to civil service protections.

The salaries for these individuals and, in fact, their continuation as Federal employees is determined at the discretion of their supervisors, therefore, the Administration. Additionally, I believe one of the most recent hires into the program review branch was a schedule C appointment.

It is not possible with these resources and this kind of management to carry on monitoring effectively. Let's talk about numbers of staff.

In 1984, the Assistant Secretary, Ed Martin, testified that it would take 40 to 45 people to implement a monitoring system effectively in the Department. Currently, there are 14 people on the list provided to the subcommittee who serve in monitoring. Two of those people are actually formally assigned to other units. That leaves 12 full-time monitors, possibly 14, plus a branch chief—far short of 40 or 45.

We do not have the climate, and the resources in SEP are just totally inadequate to carry out monitoring effectively. We only have to look at the outcome of monitoring to demonstrate this. Any assertion to the contrary is simply not true.

Let's talk about a standard for monitoring. I think it is entirely appropriate and fair to use the standard for monitoring which OSEP has set forth. It embodies three basic principles, and they are principles that you would apply to creating or correcting any compliance behavior or eliciting compliant behavior.

One is that you collect sufficient information to make compliance determinations on all the issues, that is, in this case, all the Federal requirements and from all the parties involved. That is all the State education agencies involved.

Number two is, on the basis of that information collected, you correct any identified deficiency within a reasonable length of time. A reasonable length of time defined by OSEP's own standard is within one school year, basically because these are entitlements to children. If the deficiency isn't corrected in a year, you are talking about a significant chunk out of, say, an eight-year-old's life.

The third standard is that you enforce, if necessary, compel the corrections of those deficiencies.

Standard number one, collect sufficient information. The monitoring system designed in 1984 included 16 manuals. They covered every Federal requirement that a State was responsible to implement. The current system today uses 6 of those manuals, and even those 6 have been somewhat diluted by the absence of some of the standards that Martin spoke to earlier, that is, interpretive standards and measurable operational standards.

So, we are not monitoring all the Federal requirements.

The two most glaring omissions, I think, is that the current system does not take a systematic look at complaints management. Complaints management, as required by EDGAR, requires that any violation of Federal or State law be investigated and resolved within 60 days. This is a critical administrative requirement within the law.

That is, a parent or an organization can go to the State and ask for an investigation, and, if it is upheld, the violation is corrected.

We do not monitor that. Every State where it was monitored when the initial comprehensive system was used was found to be in violation.

The upshot of not monitoring complaints management is that the States cannot ensure compliance on a continuing basis. They use cyclical systems as well. Their reviews are every three or four or even five years into local districts. Without a vehicle to affirmatively ensure compliance on the basis of individual cases, we cannot ensure compliance.

The other fallout of this is that parents have now been put in the role, in the absence of a good complaints management mechanism to enforce the law for their individual child, as being the enforcers of the Education of the Handicapped Act. We now have parents—and you will hear testimony to this later—going around trying to get State education agencies, the U.S. Department of Education, and local school districts to enforce the law.

That is not their job. It is the job of public agencies. Taxpayers pay public agencies to abide by the law. Parents should be dealing with the educational decisionmaking process for their children and participating in the development of public policy for all of us.

We don't have time as parents to go around enforcing the law and doing the job of other agencies.

The second glaring omission is the comprehensive system of personnel development. CSPD has never been monitored, and to be ignored at a time when the Department is actively speaking the rhetoric of quality learning outcomes, when CSPD requires the provision of adequately prepared staff and the use of best practice, is absolutely illogical. It is not possible.

The second standard we have to look at is whether or not identified deficiencies are corrected. The testimony is replete with this. Let me give you one example.

Your question on corrective action plans in the State of California is absolutely on point. The 1980 report found violations specifically in the availability of related and occupational therapy mechanisms based to an administrative mechanism in California called Crippled Children's Services. In 1985, the report again found that violation.

There are tens of thousands of handicapped students in California who receive PT and OT. PT and OT is not part of the IEP process. It is prescribed, and there is some question as to whether or not challenges to those decisions can be remedied through a due process hearing.

This is a fundamental violation, a service delivery violation, not some abstract procedural violation. It has not been corrected.

California was monitored in September of 1985. There is no final report out.

The OSEP monitoring process has seven steps: pre-site preparation, on-site data collection, issuance of a draft report which OSEP's own procedures require to be done in eight weeks, receipt of the comments from the State—that is twelve weeks, final report by OSEP—that is sixteen weeks, receipt of a corrective action plan from the State—that is twenty weeks, approval of the corrective action plan, and then implementation.

OSEP's procedures call for the draft report to be out in 24 weeks. Not one draft report issued in the last three years has been issued in less than 8 months. We are talking about step 3 in the process not having been completed in less than 8 months.

I think that the remedy to getting the reports out on time, by the way, is for you to have a hearing every 8 weeks, because when the hearing occurs, there is a flurry of reports that go out. [Laughter.]

Mr. **Rostetter**. So, if you could do this, we would have it all under control.

I gave the example of California. Virginia you will hear more about, but Virginia—I want to clear up something. OSEP does not have the authority to investigate individual child complaints. However, when presented with a complaint that clearly demonstrates an alleged violation of State procedures or local procedures, OSEP does have an obligation to investigate, because that is within their purview.

The complaint in Virginia which initiated all of the Virginia stuff was such a complaint. Within one year of that complaint, the staff produced memoranda which demonstrated serious deficiencies, in fact, violations of the methods of administration requirements in the State of Virginia and in the Fairfax County public schools. That has never been remedied.

So, the question of whether or not OSEP corrects identified deficiencies is over. There are no corrected identified deficiencies unless States, after getting a draft report, have voluntarily corrected them.

The last standard is enforcement. Obviously, there is no enforcement if you never got to the point of approving a corrective action plan because you have never said yes or no.

My bell went off. I think I have made my points. Thank you.

[The prepared statement of David J. Rostetter follows:]

TESTIMONY BEFORE THE COMMITTEE ON SELECT EDUCATION

Presented by David J. Rostetter

March 30, 1980

Mr. Chairman and Members of the Committee:

I am deeply appreciative and pleased to have this opportunity to share with you my perceptions of the effectiveness of the Office of Special Education's management of its Comprehensive Monitoring Process. My testimony is based on information and experience which I have accumulated as an employee of the Department of Education and as a private consultant.

Since resigning from the Office of Special Education Programs (OSEP) on August 1, 1986, I have provided assistance to the Department of Justice, the Department of Education, the federally funded Regional Resource Centers, state and local education agencies, parent and professional organizations, and parents of children with handicaps regarding the implementation of federal requirements and proper methods of administering special education programs. I worked for the Department of Education for eleven years. During that period I designed the two most recent OSEP monitoring systems and administered the Unit responsible for their implementation. Therefore, I believe I understand the intent and implementation of these systems.

I believe that my experience, and my independence from the organizations and agencies which may have a vested interest in OSEP monitoring, place me in a somewhat unique position to assist the Committee in drawing conclusions about the management and effectiveness of OSEP.

Since 1983, OSEP has engaged in the most ambitious effort to improve the quality of special education since the passage of Part B of the Education of the Handicapped Act (EHA - B) in 1975. These initiatives have included:

- full implementation of the LRE requirements to assure that handicapped students are educated with nonhandicapped students to the maximum extent appropriate;
- the establishment of early intervention programs;
- the development of transition programs and supported work approaches to ensure economic and social independence for the first "EHA - B generation";
- increasing the shared responsibility of all educators in the provision of appropriate educational services;
- an aggressive monitoring posture to comprehensively review and correct problems in the implementation of EHA - B; and
- active support of parent organizations as partners in the major decisions regarding special education at the local, state, and federal level.

These initiatives are clearly the result of the foresight of the Assistant Secretary of OSERS and I support them totally as conceptualized. However, the gap between the attainment of these initiatives and their initial identification is so great that I have come to believe that we have actually lost ground on several of them. In fact, the inability of the Department to carry out these important initiatives is so pervasive that it will take years to recover. The credibility of OSEP among those who must implement these initiatives has been so seriously damaged by inconsistency and mismanagement that it is quite likely that the initiatives identified above will not be fully carried out for many years. I base this assessment on the following facts and conclusions.

Monitoring

The most important and legitimate role of the federal government as set forth by EHA - B is to ensure that the States administer their programs in a manner which is consistent with federal requirements and State standards. OSEP has three major administrative vehicles to ensure that this occurs: the review and approval of State Plans; the monitoring of compliance with federal and State requirements; and the provision of technical assistance. The subject of these hearings is primarily monitoring which has been the subject of Congressional hearings ever since the passage of the Act. Monitoring is the most visible and controversial method to ensure compliance although it is best accomplished when all three responsibilities are carried out.

To date, the primary focus of OSEP has been monitoring of State agencies as the vehicle for ensuring compliance. Virtually no staff devote time to the provision of technical assistance on the implementation of EHA - B. This role is "farmed out" to the Regional Resource Centers, as part of their function to meet federal and State identified needs.

During the last ten years monitoring has ranged from intrusive, resource intensive visits with ten member teams, to low visibility teams of two staff visiting only the State education agency. The monitoring system in place at OSEP today was designed in 1984, and was the direct result of a hearing before this Committee which focused on problems in the previous system.

The previous system was specifically designed to create as little disturbance as necessary because the administration was in the midst of attempting to dismantle the program entirely through deregulation and repeal of the Act. At that time, only two staff members visited the States and the reports used a format that included commendations, recommendations, and concerns which were actually violations. The reports were delivered in an average of fourteen weeks and in all but a few cases resulted in a close out of the findings within a year of the visit. This system came under justifiable attack for being too soft and demands for a more rigorous process were made. It should be noted that during this period the Department did issue some very tough letters which caused many significant changes and improvements in States. Also, the system probably did as much as possible considering a General Counsel who thought the Act to be unconstitutional and a Secretary of Education who was quoted in airline magazines as saying he thought the law should be changed.

During the 1984 hearings three basic criticisms of the existing system were raised by Congress:

1. There was inadequate staff to perform the duties;

2. The reports were not delivered in a timely fashion; and
3. The system was not comprehensive and did not include visits to local education agencies.

In response to these criticisms the Committee was told the following:

1. The Division of Assistance to States had forty employees engaged in the monitoring of State education agencies. At the time there were only nine employees of the Program Review Branch engaged in on site monitoring and six employees engaged in the development of State Profiles used for off site monitoring and on site preparation.
2. The necessary allocation of staff to carry out an appropriate monitoring system was forty to forty-five. Shortly before the hearing an internally developed plan for a comprehensive system called for the same allocation of staff.
3. An appropriate method of monitoring must focus on the State's obligations to adopt and use proper methods to ensure compliance and not focus at the local school level. This is because it is not consistent with the structure of EHA - B to enforce directly at the local level as States are responsible for ensuring implementation at the local level. It is also impossible to monitor sixteen thousand local school districts from the federal level.

As a result of the hearing, OSEP embarked on the design of a Comprehensive Compliance Monitoring System to monitor the implementation of EHA - B. The system was tested in Maryland and Delaware and used for the first time in South Carolina in June of 1985.

The system calls for five components including (1) follow up and verification, (2) technical assistance, (3) annual data collection and review, (4) State Plan review, and (5) State on site reviews. The State Plan review system has been partially implemented. The State on site system was fully developed but only implemented in part.

Monitoring Effectiveness

In order to assess the effectiveness of the OSEP monitoring system two factors must be examined. First, does the system have the necessary management support and resources necessary to be implemented; and second, does the system meet the standards for its own operation and the standards established for a proper method of monitoring?

Management and Resources

Monitoring is a volatile and sensitive responsibility. It is extremely difficult to have an appropriate system without the emergence of politically sensitive confrontations. In fact, even during the low profile monitoring years of 1981 - 1983, there were several very difficult disputes between states and OSEP. It is not unusual for such disputes to result in internal struggles and disagreements which threaten the security of the staff as they set forth the case against a particular State. Therefore, monitoring must be conducted in an organization where the leadership and management will clearly support the staff and the findings to the fullest extent possible. If this is not the case, morale suffers and, more importantly, the staff may begin to not make a case for noncompliance assuming that they may lose anyway. This is a persistent problem which must be managed effectively or the credibility of the entire system suffers. Unfortunately, such a climate does not exist in OSEP. There has been no stability in the management of the monitoring system since 1983.

Since that time there have been six different Directors of OSEP, seven different Deputy Directors, and five Directors of the Division of Assistance to States (DAS). This is even more striking when it is pointed out that the DAS position was vacant for fifteen months and The Branch Chief position for the Program Review Branch (PRB), which administers monitoring, was vacant for eighteen months. Such a rate of turnover can not possibly lead to a stable enough environment to conduct monitoring.

Additionally, PRB is not staffed with career civil servants with any job security. Their salaries and jobs are determined on an annual basis and they can be dismissed at any time. The Team leaders, in particular, fall into this category and have no more security than political appointees. This is hardly a position where even the most courageous of us would enjoy, with the leadership changing more than once every six months. On several occasions, monitoring staff have placed their concerns in writing to the Director of OSEP and the Assistant Secretary about internal management problems or the arbitrary removal of findings from monitoring reports. They have been reprimanded for writing such comments. Effective monitoring simply can not be carried out in such a chaotic environment.

In addition, the staffing of the organization has been removed of any relevant experience. None of the professionals supervising monitoring and making policy decisions above the level of Branch Chief have any expertise in the administration of EHA - B at the State or local levels.

These organizational deficiencies are further compounded by the fact that there are simply not enough staff to do the job. Any assertion to the contrary is simply not true. The 1984 hearings revealed that the experts and the Assistant Secretary felt that forty to forty - five professionals were necessary to have a viable monitoring process. Currently OSEP claims to have fourteen professionals assigned to the Program Review Branch. This includes two professionals who are actually formally assigned to other Units. The design of the Comprehensive Monitoring System was based on an adequate assignment of staff which were promised but never hired. The PRB staff also review State Plans and manage complaints. In 1980, forty five professionals handled these responsibilities. The internal plan developed in August of 1984 contained an analysis of each discrete task in the monitoring and State Plan Review processes and established a minimum personnel level of forty five. The fact that only fourteen professionals would be assigned to monitor a 1.1 billion dollar program which provides the procedural protections and State authority to serve 4.2 million children with handicaps is disgraceful.

Although this situation is completely predictable under an administration which tried to dismantle the program four years ago, and halted the Civil Rights progress of this country, it is astonishing and frustrating to see it continue unchallenged for seven years. EHA - B is a successful program which has brought about major social policy and program changes for all of us with minimal federal investment. It deserves better.

Monitoring Standards

Before assessing the actual performance of the OSEP monitoring system, a standard for what constitutes a proper method of monitoring must be established. It seems totally fair and rational to utilize the standard OSEP has established to which it holds States accountable. The standard established by OSEP is a generic monitoring standard and is applicable to any set of circumstances involving compliant behavior. It is rooted in case law and represents precisely the same process used to ensure any change in behavior at the classroom or national level. The standard has three basic elements:

A. Information sufficient to make compliance determinations must be collected and analyzed continuously from all agencies on all program requirements;

B. Each identified deficiency (resulting from A. above) must be corrected within a reasonable period of time (but not to exceed one school year); and

C. Enforcement procedures, such as withholding of funds or Court Orders, must be exercised to compel the correction of deficiencies when necessary. (taken from the OSEP Monitoring Manual).

OSEP performance on each of these standards is assessed below.

A. Information sufficient to make compliance determinations must be collected and analyzed continuously from all agencies on all program requirements:

The initial Comprehensive Monitoring system was to include a review of all procedural requirements at the State level with a local review of selected requirements to test the effectiveness of State administrative procedures. Sixteen Manuals were developed for this purpose covering all federally imposed legal obligations. Only six of the Manuals are used and they have been edited to eliminate some of the standards initially developed.

Perhaps the two most glaring omissions from the process are the review of State Complaint Procedures and requirements for a Comprehensive System of Personnel Development (CSPD). During this hearing you will hear testimony regarding the repeated failure of complaint procedures at the State level. In fact, during the initial monitoring using the entire system, every State was found to have deficient complaint investigation procedures. A State cannot ensure compliance without an adequate complaint procedure. Routine compliance monitoring can not identify and correct deficiencies unless parents and organizations can prompt investigations. A cyclical process which calls for reviews on a three or four year schedule will not be effective on a continuing basis. Also, when violations of law are alleged and not appropriately investigated, the parent becomes responsible for ensuring compliance through the due process procedures or political activism.

This movement of parents into the role of "enforcer" is the direct result of the failure of the Department to ensure that States have a vehicle for the investigation and resolution of complaints. In fact, the increased emphasis on parent "partnerships" is a distortion of the appropriate role of parents in the formulation of policy and the educational decision making process for their children. Millions of dollars are expended to train parents to play the role of ensuring compliance when they could be devoting their energies to the improvement of public education. Being in compliance, and ensuring compliance, are the obligations of agencies supported by the taxpayers of this nation. Instead, in the name of "parent partnerships", we place parents in the role of fulfilling that responsibility. It is a facade which directly results from the failure to enforce existing public policy. The removal of this component of the monitoring system is a serious flaw in the OSEP process. (NOTE: while the complaint record is reviewed on some of the visits, the entire complaint management procedure as required by EDGAR is not reviewed)

The second serious omission is the monitoring of the CSPD requirements. Recent rhetoric from OSEP leadership expresses an interest in learning outcomes. How is it possible to address this issue when the part of the law which requires the preparation of adequately trained personnel and the implementation of best practices is ignored? OSEP can not logically hope to establish an initiative on quality of learning outcomes without at least ensuring that the minimal CSPD requirements are in place.

It is therefore clear that OSEP itself has implemented a Compliance Monitoring System which does not address ten of the sixteen major areas of the Act. OSEP does not collect information sufficient to make compliance determinations for all requirements.

Neither does OSEP collect information about all relevant public agencies. Many programs are directly administered by the States. Unlike LEAs, these programs are parts of the State structure itself. When States monitor these programs, they are actually monitoring themselves. These State operated programs must be reviewed by OSEP because OSEP is the only "external" monitoring agency which can ensure compliance. Despite this fact, OSEP routinely excludes such programs from its monitoring. For example, since 1984, no State schools for students who are deaf or blind have been visited by an OSEP monitoring team as part of a normally scheduled monitoring review. The teams have been directed to not propose these agencies for monitoring. These schools represent the most segregated educational programs offered for the purposes of education. In the face of a major LRE initiative, OSEP has chosen to not protect the rights of students who are deaf and blind to education with non handicapped students to the maximum extent appropriate. Similarly, in some cases OSEP has chosen not to monitor State institutions despite complaints filed against such institutions by advocates, and in one case, by the Department of Justice. Despite recommendations by staff, and clear evidence of non compliance, OSEP teams were precluded from monitoring an institution in Oregon and training centers for the mentally retarded in Georgia. OSEP does not monitor federal requirements in all agencies as required in their own Standard for a proper method of monitoring. Also, despite commitments to a three year monitoring cycle OSEP has now moved into a schedule which will allow visits only once every five to six years. This is the least frequent visitation schedule in the history of the program. An explanation of the second OSEP standard for a proper method of monitoring follows.

B. Each identified deficiency (resulting from A. above) must be corrected within a reasonable period of time (but not to exceed one school year).

Most of the attention in monitoring is focused on the on site review as if it were the most important component of the monitoring process. In fact, it is the least significant and easiest part of the process. The real test of a monitoring process is whether

identified deficiencies are corrected. This does not occur until **after** the entire monitoring process has been implemented. OSEP's **standard** for correcting deficiencies within a reasonable length of **time** approaches the absurd when applied to its process. The recent **report** to Congress calls the issuance of draft reports in less than **a year** a "significant improvement". To understand the **insignificance** of this improvement the entire monitoring process **must** be described. The following steps describe the OSEP process: **(taken** from OSEP procedures for conducting monitoring, 1985)

1. Review collected information prior to on site data collection (begins 16 weeks before visit);
2. Conduct on site data collection;
3. Issue Draft Report (8 weeks after visit);
4. Receive State response (12 weeks after visit);
5. Issue Final Report (16 weeks after visit);
6. Receive State corrective action plan (20 weeks after visit); and
7. Approve plan (24 weeks after visit)

OSEP has not issued one Draft Report within the timelines established for the entire process. In fact, even the first State monitored under the new system in June, 1985 (South Carolina) has not passed through step 6. above. California has not yet received its final report (step 5. above) and it was monitored in September, 1985. Given recent events it appears that the only event which prompts any acceleration in this process is a Congressional hearing. Perhaps the Committee could schedule hearings every eight weeks to ensure the implementation of the system. The tragedy in all of this is that this extraordinarily poor performance directly effects the provision of the entitlement guaranteed under EHA - B and State laws. When the federal government identifies deficiencies in the implementation of laws protecting handicapped children, and fails to correct them, hundreds of thousands of children are not assured the free appropriate public education guaranteed by Congress.

A review of some specific States and the application of the federal system for ensuring compliance further illustrates this point. In November, 1980, OSEP issued a 56 page monitoring report to the State of California. It was clearly the most rigorous effort at enforcement attempted up to that point. Unfortunately, a presidential election resulted in an administration which ordered OSEP to negotiate the findings and "close out" the issues immediately. Not surprisingly, these same deficiencies again were found during the September, 1985 on site review of California. Prior to the visit, the Deputy Assistant Secretary advised me to "avoid making findings" as a result of the California review. This "advice" was never heeded. As of this date the findings in the November, 1980 letter remain unaddressed. Since that time over half a billion dollars in federal funds has been awarded to California in the presence of clear evidence of non compliance.

In July 1985, a complaint was filed against the State of Georgia alleging that over 300 children were not receiving a free appropriate public education. Included in the complaint was a letter to all school districts from the Georgia Chief State School Officer explaining that many profoundly retarded school age students could not benefit from education and were therefore not entitled to an Individualized Education Program. After contacting the State Director of Special Education it was confirmed that the State was willing to stay with that position. In fact, the State sent a list of the actual students and clearly identified those who did not have IEPs. A meeting was held with representatives of the Georgia Department of Education and Attorney General's Office and the position was again repeated. Four months after the complaint was filed, a letter was sent to the State explaining that EHA - B precluded such a position. Meanwhile, none of the students had received IEPs. As of today the only documentation received by OSEP regarding this matter are letters of assurance that the matter has been cleared up from the same State Director who set forth the initial position. Five months after the complaint, a routine monitoring visit was conducted but the team was precluded from collecting any information on the issues in the complaint. Only one OSEP staff member has gone on site to investigate the issue and as of the last review in July 1986, over one hundred students still did not have IEPs. No on site review has been conducted to verify the State's assurance of compliance and it is my understanding that 62 children are still without IEPs. If the matter is cleared up OSEP has no basis in documentation to ensure that it is.

In the State of Virginia a truly extraordinary scenario of OSEP neglect has unfolded. In January of 1985, a complaint was received which alleged violations of EHA - B by the State of Virginia and the Fairfax County Public Schools. Normal procedures called for the complaint to be referred to OCR and to the State for investigation. The State was contacted. The State then informed OSEP that it had the complaint but would not investigate it because OCR would. Regional Office OCR did conduct an investigation and, issued a Letter of Finding. After my review of the LOF and considerable internal negotiating, OCR rescinded the LOF. In the meantime, it was clear that the complaint alleged serious procedural violations of EHA - B. If the allegations were valid, the monitoring and review of LEA applications procedures at the State level were clearly inadequate.

After a year of internal chaos and refusals by the Assistant Secretary to investigate the issue OSEP requested the documents necessary to conduct a review of the situation. After the review of the documents PRB provided an analysis of the materials which cited numerous procedural violations in Fairfax County regarding placement in the least restrictive environment and IEP development.

The analysis also revealed non compliant monitoring procedures, complaint investigation procedures, and LEA application review procedures at the State level.

By September of 1986 (18 months after the original complaint), additional complaints had been received. OSEP had still taken no formal action to resolve the complaints. The staff prepared internal documents which called for the immediate on site investigation of the issues. However, by this time Fairfax County had prepared its third attempt at drafting compliant procedures. When staff persisted in providing the rationale for a comprehensive review of the issues, the members of the team normally assigned to Virginia were dismissed and the professionals who had developed the investigative plan were removed from the assignment. Finally, an on site review was conducted by one PRB staff member, two staff from the OSERS front office, and the Deputy Director of OSEP. Three of these people had no experience in monitoring LEAs. The on site visit consisted only of a review of documents and discussions with FCPS staff. Only sixteen student records were reviewed and those records were selected by FCPS. No visits to classrooms or interviews with teachers were held. Additionally, none of the complainants were interviewed as part of the investigation. After the review OSEP concluded that while there were serious concerns in the past, FCPS had now fixed them. The basic question remains concerning the 14,000 students who were evaluated and placed under the previously illegal procedures. How could OSEP possibly determine anything on the basis of a self selected sample of sixteen files in a schoolsystem that serves more students than does the State of Nebraska? No findings have ever been made against the State despite attempts to do so by OSEP staff.

Last week, an external evaluation of the State of Virginia's administration of special education programs was released. The study was commissioned after tireless efforts of parents forced the Board of Education to seek an independent analysis. The report found exactly what the initial analysis conducted by OSEP found two years ago: The State's monitoring, complaint, and LEA application procedures result in non compliance at the local level and the State has failed to enforce the law. OSEP has done nothing to address the issues of the initial complaints and it has now been confirmed that the State does not ensure the implementation of EHA - B and State laws. All of the information necessary to correct these problems was available to OSEP two years ago and none of the deficiencies identified have ever been corrected.

In 1981 the State of Ohio was monitored by a joint team from OCR and OSEP. The result was an implementation plan which helped to reduce the number of handicapped students in separate facilities from 12,000 to 6,000 students. In 1986 an OSEP team again visited Ohio. Despite the earlier findings, and a review of the school system which relies solely on separate placements for such children, OSEP found no violations of the LRE requirements. The data collected clearly established that such violations exist but OSEP failed to make the findings in its three page final report. The absence of findings in Ohio demonstrates a lack of ability on the part of OSEP to consistently apply its standards.

These examples clearly establish that OSEP does not meet its own standards for correcting deficiencies and, in several cases has neglected its responsibility to take any reasonable efforts to ensure compliance.

An analysis of the third and final standard follows.

C. Enforcement procedures such as withholding of funds or Court Orders must be exercised to compel the correction of deficiencies when necessary.

The issue of whether OSEP has ever enforced a requirement is not relevant. It has never gotten to that point in the process. However, it does raise an extremely important concern. OSEP has not yet decided what the acceptable outcomes of their monitoring system are. Several States have asked for such determinations through the submission of draft procedures and corrective action plans. OSEP has yet to respond to any such requests for assistance. It is not possible to enforce the law if the desired remedy is not clear. OSEP has been unable to decide. It is immobilized by its own lack of experience and inability to make appropriate and necessary decisions.

Technical Assistance

It is not possible to provide technical assistance to States until OSEP determines what it intends monitoring to accomplish. This is the dilemma of the RRCs as they attempt to assist States in complying with federal requirements. How is it possible to provide guidance and support when the professionals who will disapprove or approve the results can not set forth the criteria for their determinations? An additional problem for the RRCs is the cumbersome and unnecessarily burdensome paperwork involved in administering the program. RRCs are required to report monthly by task, hour, cost, person, and objective. A recent OIG auditor was so perplexed by the reporting requirements that he notified the Contract Officer. No revisions were made in the new RFP to accommodate these concerns. This type of over management removes the responsiveness and flexibility necessary to maintain an effective T. A. system. It also drains resources from the delivery of assistance.

Conclusions

The following conclusions and recommendations are a result of the analysis provided above.

1. Any violations of law regarding the administration of Part B of the Education of the Handicapped Act which existed in 1983 in State education agencies still exist today unless they have been corrected through other means.

2. Any entitlements guaranteed under federal law to children with handicaps which were not provided in 1983, and

require compliant administration by State education agencies to be provided, are not provided today unless the violations were corrected by means other than OSEP monitoring.

3. Hundreds of millions of dollars of federal funds have been granted to States who have not demonstrated compliance with federal requirements due to the mismanagement of the OSEP monitoring system.

4. The causes of these problems must be addressed by all those involved in the provision of special education, and in particular, the Secretary of Education who is ultimately responsible for the performance of the Department. The law binds the Department to administer the law and we should not allow these problems to be viewed as a "Special Education" problem created by special educators.

5. The current staff and expertise at OSEP is not capable of solving the problems identified above.

6. This situation has gone on too long and Congress and State legislatures must take greater interest in their responsibilities by insisting on accountability and allocating sufficient resources to administer these programs.

7. Efforts must start immediately to rebuild the relationship between the Department, State education agencies, and local education agencies essential to the successful implementation of federal and State requirements.

8. The outcome of the system is only a consistent and non productiveharassment of the States given that no changes in the implementation of the law has resulted due to the implementation of the monitoring system.

These comments have been provided in the hope that the federal role can once again become a productive and essential part of the provision of educational services to students with handicaps. If I can assist in any way in your efforts to accomplish this, I will certainly do so. Again, thank you for this opportunity.

Mr. OWENS. My first question goes back to the question I asked Mrs. Will, and that is, do we have a system that the States take seriously, and is it credible?

And does it matter that the approach to many programs has been a block grant approach where they give a grant to the States and as long as they certify and check to see that nobody is stealing money and basically the money is being spent in the categories it was allotted for, they leave it up to the States. Have we got an operational philosophy here? No matter what we say, is that what is happening, that it is being left to the States basically to run the program?

From what you say, it sounds as if that is about what has happened. The staff is not there, the standards are not there, and, most of all, the will is not there.

Mr. ROSTETTER. Well, the will is there.

Mr. OWENS. The pun was not intended.

Mr. ROSTETTER. Is this a question for me?

Mr. OWENS. The question is for you or anybody else, but since you have the floor.

Mr. ROSTETTER. I actually did not intend it as a pun. I think that the Assistant Secretary is definitely committed to a serious monitoring role. I think that the outcome of this system were you to extract the performance from the commitment clearly demonstrate that there is not one.

In fact, the continuous operation of such a system where no identified deficiencies are corrected and no enforcement results totally damages the credibility of the Federal role. That is what I am so deeply concerned about.

I do think that there is a pervasive attitude above Mrs. Will—I don't have first hand contact with those people—that the States should be doing their job and get off their backs, et cetera.

I don't believe that is the case. I don't believe that the data in the reports demonstrate that is the case. I do believe that the performance of the system is so inadequate that it is easy to conclude that is the case.

In terms of outcome, that is clearly the case. We haven't compelled anyone to correct anything at this point. We haven't even decided whether or not a corrective action plan is acceptable.

Mr. OWENS. Mr. Gerry wants to comment, but let me just throw a curve.

Ms. Walsh, does it matter—we have launched a new program now, and the States are doing very well overall, you would say—does it matter whether we monitor them or not?

Ms. WALSH. I think it goes without saying, Mr. Chairman, that the States feel very strongly that monitoring is an important part of the process. They have always said that.

Particularly in the preschool process, I don't believe we have—over the past 10 years, preschool has not been heavily part of the monitoring process, but States are making great progress in this area now, and I believe it will be part of that process.

Mr. OWENS. Now, you cited some problems in terms of maintenance of effort, monies being taken away from certain areas.

Ms. WALSH. We heard some initial concerns from States which report that in their beginning negotiations with the other agencies—this is particularly true in the new Part H program—agencies are already withdrawing funds and attempting to redirect them into other priority areas. I think that is definitely a problem with the 3 to 21 program also where States are struggling with financing arrangements with other agencies.

Mr. **Owens**. You also said there are unnecessary burdens on the lead agencies and also you can't get them to share data. It seems to me there is some data you can share without running into confidentiality problems.

Ms. **Walsh**. That is true, and some States have been more successful than others at those interagency agreements. I think what would be helpful would be if the Federal agencies would set clear statements, through this council for instance, about what is appropriate and how it is appropriate to share information so that you can ensure confidentiality.

Mr. **Owens**. Mr. Gerry, does lack of monitoring have a serious impact on programs?

Mr. **Gerry**. Yes, and I think—in response to the question that you asked, I wouldn't be as worried as I am if I thought the situation really was being left to the States. I am afraid that in most cases, it is being left to the local school districts.

In other words, I think what is going on is not the States are taking over for the Federal Government and, in effect, running a system but not running it well. I don't think that is true. I think, as a practical matter, the politics of education in this country is such that the Federal Government needs to present a strong monitoring presence, in part, to help the States assume their proper role.

I think there is a tendency and there has been a history of the States themselves having difficulty really carrying out effective monitoring, not because of lack of will but because of a tradition, in some States at least, that local school systems are where decisions are made.

I have felt from the beginning—and I think it has been a problem the Administration has had in general on civil rights—a failure to understand what I think is a fairly important partnership relationship between Federal and State government where the Federal Government acts to some extent to kind of beef up the authority of the States when that is challenged, as it often is in this area.

That is one thing I would say, and I think that if actually we had a situation where the State role were enhanced and improved, that is really what the Federal monitoring process should be primarily about. Then the system would work.

However, I think right now, the weakness that OSEP has in its lack of enforcement weakens the States as much as it weakens the Federal role. It weakens both of them together, and that leads us to the local school systems kind of going off on their own. I think that is much more of a problem, and I think there are serious problems with compliance at the local level.

Mr. **Owens**. So, you would begin by recommending what kind of action by Congress?

Mr. Rostetter, you said there is not enough staff, the staff is in the wrong categories, they don't have the stature and authority and security.

Mr. **Rostetter**. I think that were we to initiate more staff into OSEP, they would be subjected to the same kind of inconsistencies and management ineptness that 14 are subject to now, so you would have 75 people creating chaos in the States.

I think that we have to step back a bit. I think we have to talk seriously about what monitoring is intended to result in. It is not intended to result in harassment. It is intended to result in the States' exercising their authority and their responsibilities.

I think that if we continue on the current track, the outcry from the States will be so loud that the next monitoring system will be back to where we were in 1981, and that is two Feds going out and saying hello.

What we really have to do is to encourage the Assistant Secretary or do whatever you can do to move back from the system and take a serious look at it and get it repaired quickly and in good shape so that it targets issues, it picks issues and does a job which it can finish, and get that system in place before January 21, 1989 when, shortly thereafter, we will have a series of hearings like this and we will go through another year and a half of design, and we will end up with about 10 years of non-monitoring at the States.

I think we need to do it very quickly.

Mr. **Owens**. One serious comment. I didn't mean to make light of what I was saying about the block grant mentality. The block grant attitude is the legacy—well, it is this Administration's way of operating. I don't want it to be a legacy that Washington is stuck with forever, and I fear there is a danger of the block grant mentality taking hold to the point where they will say, well, other programs are out there, they don't have monitoring and close supervision, why not let this one follow the same pattern.

I think that regardless of what may be the situation with respect to this particular Assistant Secretary and her management style, the people above her are not displeased with laissez faire, the laissez faire approach, because the laissez faire approach has been the pattern throughout this Administration for all these programs.

So, we need from you some justifications in order to help fight the laissez faire approach and the legacy that we may be confronted with, Democrats or Republicans, in terms of why not just leave it to the States.

Mr. **Rostetter**. I think the prevailing attitude now may be kind of benign neglect and let's just let it go along, there is a lot of trouble down there, and let it bubble.

In 1981 and 1983—and a lot of us remember this very well—we went through a process of attempted deregulation and actual repeal of this Act. Running a branch and monitoring was indeed interesting at that time, because most of the States were engaging in precisely the same rhetoric.

In a very real way, we are recovering from that, and I think that is one of the problems we have with this monitoring system. This monitoring system is almost an enigma in the prevailing attitude that you are describing about give them a block grant and let them do the job.

I don't think there is objection to revising this monitoring system and making it more productive and still assuming a rigorous posture with States if we become a little bit more clever and a little bit smart about it. Right now, we are kind of on a monitoring treadmill.

I think we can do that, but what I am suggesting is that we do it very, very quickly.

Mr. **Gerry**. Mr. Chairman?

Mr. **Owens**. Mr. Gerry.

Mr. **Gerry**. First, if I could, Mr. Chairman, I want to associate myself with some of your comments, but on others, I am not sure how to do that.

First, I want to say for the record that I think there are many States that are doing a good job of monitoring, and I would have to say, in general, that is despite lack of support rather than because of it. In fact, I think to some extent some of the States that have done a good job have been actually undermined by the weakness of the Federal oversight of their activities, and that has tended to undermine them.

There are other States that are not doing a good job, and I think that is also true.

However, I want to say that historically, from a civil rights perspective, there has been a mistrust of State education agencies. I was at OCR from 1969 to 1977 when it probably was legitimately at its height over southern school desegregation and a series of other issues which the States, in general, played a very little positive or constructive role.

That is not true in special education. The fact is that State education agencies and their offices, I think, are staffed by a different group of people, and they have different priorities, and, in general, they are much more legitimately interested themselves in improving monitoring and, I think, have a stake in some of the changes that you are talking about.

Congress, I think, is responsible for one problem in this system that is important, and that is the myth of general supervision. When Congress passed 94-142, it concluded in the legislation that the State education agencies are in general supervision of all education programs for handicapped children in the State. That was alluded to earlier.

It just doesn't happen to be true in virtually any State. So, as a practical matter, that sets up the political process that we are talking about where, somehow, if the State education agency is really going to carry out its role, it has to acquire some of that supervisory authority.

The point I was trying to make is one way for a State education agency to get some of that authority is for it to be literally delegated and devolved from the Federal Government. That is what should be happening, and I don't think that is happening.

I would say as far as what Congress can do, I think there are two or three things. First, I think that OSERS and, in this case, OSEP, does need more staff. While I agree with David that if you just added staff and did nothing else, all the problems wouldn't go away, still there has to be more staff.

And given the realities of the Federal budget process, it seems to me Congress should be dealing with that now, because the work that needs to be done to get ready for the staff—there is always the lag time between the budget and the actual occurrence of personnel—is great enough that I don't think we ought to worry about that.

Secondly, I think that the subcommittee, particularly, should pressure the Department for standards, for the issuance of monitoring standards, and support the idea of an open process for publicly discussing them and resolving them. However, I think that is important.

Once they are on the books, whether everybody likes them or not, as long as there has been a fair process, then I think it is much easier for the subcommittee or for anybody else to keep the Department much more accountable, whomever is in charge of it, with respect to what it is doing in terms of making findings.

I think the third thing would be—and I think it is very important—is that Congress, I think, should appropriate some funds and direct that they be used to help the States acquire much better data collection and analysis procedures.

One of the biggest problems right now is that no matter how well you ran the Federal OSEP system, when you arrived in most State education agencies, you would not find in place a management information system that would give you very much data about what is going on in local school districts. In other words, if you don't have the information, if it isn't collected, then you either get into these two-day quick visits to local school systems which is about all you can do, because you can't even sample a State because there are too many people and too many children.

So that in terms of building a good monitoring system, a key ingredient is developing a management information at the State level so it is collected routinely from local districts so that the Federal Government can oversee it and the States can use it.

One way to go about that in addition to just putting pressure on would be to appropriate some funds to support it. I think those would be sought and would be used, particularly by States that want to do it but don't have the resources.

Mr. **Owens**. Mr. Trohanis?

Mr. **Trohanis**. Thank you, Mr. Chairman.

Another whole related set of concerns that I want to share and for the subcommittee to keep in mind, we have been talking a lot about the State education agency and its responsibilities. For the Part H program, we find well over 60 percent of those programs are in lead agencies that are not education agencies.

So, I think there is a new challenge that certainly OSERS is facing and I think for the subcommittee to help them think about new relationships with new agencies that are taking the leadership in spearheading services for very young children and their families.

These are often agencies that OSERS may not have had relationships with so that the kinds of monitoring systems that are being discussed as they pertain to State educational agencies—are they going to be comparable for, let's say, lead agencies that may be in health, mental health, developmental disabilities, or interagency councils.

Likewise, that then brings up the whole need of standards and the time tables that you all have set forth in the legislation. We are talking about having policies in place for services for infants and toddlers within a matter of another year.

What is going to be the relationship to standards and the time table for the monitoring process? So, a number of States are beginning to query and raise questions about that as well as this time table that is tied to the resources that the Federal Government and the Congress will make available to enable us to have full appropriate services by 1991 and 1992.

Mr. OWENS. Thank you very much. We will take into consideration your recommendations. If you have any further recommendations in the next 10 days and wish to submit them in writing, we would be pleased to receive them.

Thank you for appearing.

Our next panel consists of two parent advocates, Ms. Elizabeth Bodner, parent advocate; and Ms. Marjorie DeBlaay, Parents for Compliance.

If you have been with us for a while, I think you have heard quite a bit that you might want to comment on. We have your testimony, and you will have to confine your comments to about 7 minutes, but we will have the opportunity to elaborate on any other items that you want to discuss during the question and answer period.

Your prepared statements will be inserted in the hearing record immediately following your oral presentations.

Ms. Bodner?

STATEMENT OF ELIZABETH BODNER, PARENT ADVOCATE

Ms. BODNER. As you said, you do have my prepared statement, so I have tried to summarize as best I can.

I appreciate that you are listening and that you are inquiring. This is unusual to go to a hearing where someone actually asks questions and they are concerned. So, I appreciate that very much.

Of course, first, I want to thank you for the opportunity to testify on behalf of the children in special education in the State of Virginia. Many anguishing years have been spent by parents like myself in their attempt to bring about compliance with 94-142.

As a result of the inconsistency of information on where to go for assistance, parents like myself have become professional parents on educational rights for our children in order to ensure that they are served. As a result, those that do become informed find their time in demand as unofficial advocates assisting other parents in our districts.

In my role of professional parent, I review many files and have observed a common thread that is systemic in its very nature which indicates immediate corrective action should be taken to assure the continuance of 94-142. The following evidence has been observed.

Children, particularly those diagnosed as learning disabled who had initiating IQ's in average to above average ranges, when first tested for eligibility, experience up to 30 point drop in their overall IQ scores within 3 to 4 years of placement. After several years of placement, many of the children began to display adjustment and psychological problems which then become the primary condition rather than the initiating disability.

Inappropriate testing methods have been used to determine the needs of the children, or deficits that are indicated in the testing are ignored when placement occurs. It is standard practice during tri-annual reviews that comprehensive testing is not used.

Comparative scores are not used to measure the effects of the program. Instead, subjective determinations are made by this committee.

IEP meetings with parent participation are the exception rather than the rule. IEP's are sent to the parents through the mail or home with the student for their signature. There is consistent evidence of this by the multi-dated IEP's with inadequate signatures on them in the files of the children. IEP's are not written to the need of the child before the pre-existing programs.

I have participated as a witness in several cases in the juvenile domestic relation courts on behalf of children in the process of removal from their homes with alleged charges of abuse related to inappropriate behaviors. A study of their reports indicate these children are reacting from effects of improper evaluations, placements, and inappropriate programs.

Many of these children have related disorders that exhibit unusual behaviors but are not identified by the LEA's as part of the handicapping condition. Therefore, they become potential victims of the court system.

An informal study of the detention centers in our area indicates over 75 percent of the population held in those centers are recipients of special education services or are unidentified and in need of services.

There is a 90 percent drop-out rate of our children in special education. Virginia DOE recognizes eight associated characteristics of drop-outs in their pamphlet, "Pass to Dropping Out: A Model for Identification." Five of the eight characteristics refer to our children directly, in particular, special education placement.

That has become a very expensive commodity when the average due process can run between $10,000 and $15,000. Access to private legal service is next to nil, and where it is available, it is beyond the financial reach of most of our parents. Free legal counsel through Rights for the Disabled is limited.

Though DRD has served many children in the State, we have found those children who have complex cases are passed over. Past history has proven DRD is highly selective in the cases that they represent or are excessively delayed or rejected because they are not sure wins or they are politically hot.

Advocates provided by DRD whose job should be to assure our children do not have to go to due process are inadequately trained in educational law. As a result of this, the parent has to be well informed even if an advocate attends a meeting with her to assure that legalities are not overlooked.

Apparently, though the initial goal of 94-142 was to identify handicapped children and provide them with free appropriate public education, this apparently does not mean that they are to become part of the mainstream. If a child is successful in obtaining an IEP that closely resembles his needs, the child then faces several major problems.

Virginia DOE regulations allow open discrimination by virtue of the fact that regular teachers can refuse to teach handicapped children. If a child needs adaptations in the classroom, no matter how minor, the IEP is not binding by the regular teacher.

If a child is attending regular classes with resource back-up, there is no formal procedure for assisting children with needs in the class, as special education and regular teachers do not communicate. The only way a child can be served is by removal from the mainstream, isolated in classes with children who are in need of specialized programs.

A recent study in the Harvard Educational Review in 1987 indicates only a scant 2 percent of our children return to regular classes after removal from the mainstream. It is interesting to note the statistics for this particular study did not come from OSEP, as they had not found it necessary to track the success or failure of educational needs of children since 1979.

In November of 1986, Madeleine Will presented a position paper emphasizing that the thrust of special education should be mainstreaming. If this is the position of OSEP, then why are 85 percent or more of our children isolated in special education classes? Why hasn't a change come about?

OSEP has approved Virginia's DOE regulations year after year and has not noted that open discrimination occurs. The only reference to accommodation in regular classrooms are the Virginia guidelines which are not policies and procedures, and they do not have to be followed.

Federal regulations mandate that SEA's must have advisory committees. In Virginia, local advisory committees are part of that law. The LAC's in our State are owned and operated by the directors of special education and filled with political appointees who favor the practices of that department.

If there is a movement by the community to bring about an effective working LAC, the local education group moves to very rapidly eliminate this action, as they did in our district, by disbanding the committee and reappointing another one the following year.

When these matters are appealed to the State, advisory committees are told that the public is not allowed to speak and that they cannot interfere with the LAC standing committees. When you approach the State school board, you are informed they only handle policy and procedures, and they do not get involved with personal issues in the district.

Where, then, do we as parents voice our concerns? In fact, what role do State advisory committees play if they are not interested in the problems of the district?

Filing a complaint with the State is not clearly defined in the regulations. As many parents have discovered, when a complaint is filed, more often than not, the Virginia DOE determines it is unfounded. Generally, this is based on a technicality on the parent's part.

We have asked for clarification, but it has not been provided. The parent soon discovers that their letter of inquiry is, in fact, the formal complaint, and the SEA does not communicate further with the parent. In fact, this is a one-shot deal, and it calls for detailed knowledge about complaint filings which most of our parents do not know about.

It is a policy of the SEA to allow the LEA's to refute complaints without investigation or supportive documentation. If a decision is made, there is no recourse for the parent except to file with OSEP. This has proven to be a futile activity in the past. Response from OSEP is usually excessively delayed and always determined as unfounded.

Madeleine Will, in a letter to Senator John Warner, carefully explains the powers of OSEP to withhold funds from SEA's but then states that this action has never taken place by her department. We as parents want to know what it takes to convince OSEP that the State of Virginia is in grave violation of 94-142. Who is minding the store?

When parents throughout the State approached OSEP in 1986 requesting an investigation of the Virginia Department of Education which would include investigation of multiple school districts, OSEP stepped out of the picture, and, as a result, only one school district was reviewed, Fairfax County. Reviewing one school district that is known to be the most financially and politically influential in the State obscured the possibility of confirming our complaints that the SEA is out of compliance.

Our problems are State-wide, and they need to be investigated.

In a recent study of the LEA five-year reviews, Cathie Muscat, a parent in Rockingham County, compared eight districts and their reviews of 1982 to a more recent one. It was noted that there is a lack of consistency on how to determine compliance versus substantial compliance with exception.

When an LEA had 25 to 26 percent non-compliance in an area, one district was found in non-compliance, whereas another was found to have substantial compliance with exception. There seems to be no formula to determine the results of their findings.

LEA's that were in non-compliance in 1982 were found to be still in non-compliance in the same areas five years later. There is no follow-up after the LEA's provide their statement of corrective action or further monitoring based on complaints from LEA's until the following five-year review.

Of what value does the review serve if the State does not follow through and assure compliance? Does OSEP bother to review the findings of the five-year reviews? We think not.

It appears the major purpose of OSEP has become the employment of administrators to assist in the continuation of segregated educational systems for our handicapped children. Separate but unequal educational opportunities only guarantee our children a future of illiteracy and unemployment.

OSEP, through lack of monitoring and corrective action, has allowed the SEA's to ignore non-compliance by the LEA's and the cries of the parents for correction. By refusing to investigate allegations made by parents, OSEP has denied its responsibility to our children under 94-142.

Thank you.

[The prepared statement of Elizabeth W. Bodner follows:]

SUBCOMMITTEE ON SELECT EDUCATION

March 30, 1988

Washington, D. C.

SUBJECT: MONITORING SPECIAL EDUCATION-OSEP

As an adult with learning disabilities it is quite easy for me to identify with the educational problems our children are facing in Virginia. Combined with the painful experience of educational failure as a youth, and then discovering as an adult-student in college that I was learning disabled increased my desire to learn more in this area.

By the time I had begun college as an adult many events had occurred in my life which reinforced my long standing desire to study the complexity of human behavior and to select the field of psychology as my major. I had become the mother of four children, two of them sons, each handicapped with diagnosed learning disabilities. My youngest son was further disabled with Tourette Syndrome, a rare neurological disorder. As my college program progressed I found that the studies offered in developmental learning provided the necessary tools and background to enable me to seek and obtain for my sons proper diagnoses of their conditions and appropriate testing for educational placement for their respective handicaps.

This parental need soon evolved into the active pursuit of studies related to education with particular emphasis on educational law as it pertained to P.L. 94-142. As a result of the knowledge acquired through additional self-study of scientific research, communication with professionals and involvement with organizations addressing the needs of handicapped children, this provided me with the confidence necessary to challenge those individuals in charge of my children's programs. As a result of my determination to defend my children's rights, this brought about a certain amount of public exposure which involuntarily placed me in the position of an advisor to parents seeking to enforce the rights of their handicapped children.

For the past four years, I have found my role as advocate to be admired and appreciated by the parents I have assisted, while on the other hand, it has brought social and political isolation and recrimination from those I have sought compliance from. My efforts have now grown from my local school district to the state and now the federal level.

In the past four years I have spent countless hours preparing and reviewing children's evaluations to assist parents in preparing their children's educational programs. This has not in any way guaranteed they would ever obtain an IEP that was designed to fit their child's needs, and if they ever were successful it soon became apparent the IEP would not be implemented. If the parent attempts to rectify the problem, then the child is left to the mercy of his teachers who feel free to harrass him as a result of the parent's persistence. It is more than apparent, that when a parent becomes informed this is an assurance that most, if not all services will be removed from their child as punishment. If the administration suspects or discovers that a teacher has assisted in any way, then that teacher is placed under considerable threat to retreat from her position or lose her job.

As a result of the lack of information as to where to go for assistance, parents like myself have to become "professional parents" on educational rights for our children. This involves many hours of work and only serves to increase the pressures brought upon our own children and personal lives. After working in a family business for ten hours or more a day I come home at night to handle educational problems by returning telephone calls, reviewing children's files or filing complaints in their behalf.

Inquiries usually begin with questions concerning the appropriateness of the child's program or not knowing how to respond to a situation or response from the administrative level. Generally, after reviewing the child's file I will direct the parent to the state to file a complaint or to the Department of the Rights for the Disabled (DRD) if I feel they need professional assistance. It has been shocking to discover that the most consistent evidence found in the files I review is that children, particularly those diagnosed as LD, who had initiating IQs in the average and above average range when first tested for eligibility for special education services experience up to a 30 point drop in their overall IQ scores within a three to four year period of special education placement. It is evident, these children have not been remediated or served in the least manner to address their educational needs under the law. Another observation that has been made, is that after several years in special education classes many of the children begin to display adjustment and psychological problems which then becomes the primary condition rather than the initiating disability. When reviewing eligibility evaluations for services it has been discovered that inappropriate testing methods have been used to determine the needs of the child, or deficits that are indicated in the testing are ignored when placement occurs. In our LEA, though it has been brought to the state's attention, it is the practice when triennial reviews are due comprehensive testing is not done, though the law requires it. Instead of tests that can compare the progress or lack of it in a particular area, only subjective determination by the eligibility committee is made. These children are determined to be in need of continuing services or exited out of special education in this manner. In addition, IEPs are noted as having differing signature dates on them, or insufficient signatures to complete the IEP. It has been discovered that the policy in many LEAs, including my own, is that IEP meetings are not held. Instead, IEP's are sent home in the mail or with the student for signatures. Change in placement or programs are done without notification of the parent.

Unfortunately, I have had to participate as a witness in behalf of several children in juvenile court cases in Norfolk and Virginia Beach who were in the process of being removed from their homes with alleged charges of abuse, when in fact, a study of their records indicate that these children are suffering from the effect of improper evaluations, placements and inappropriate programs. Many of these children have disorders that exhibit unusual behavior, but are not identified as such by the districts as part of their handicapping condition. Therefore, these children become potential victims of the court system. Sadly, the children I represent have been the products of special education. In several instances, too many events have occurred to protect the child and as a result they are placed in detention centers. An informal survey by our group of the five detention centers for juveniles in our district indicated that over 75% of the population had been the recipients of special education services or are unidentified and in need of services which focuses upon the 90% dropout rate of our children and its effect on them.

Individual parents who were unsuccessful in attempting to resolve problems for their children through the special education department in our LEA formed a coalition of parents. As a group we requested open forums with the Superintendent of Schools and gave presentations on three separate meetings. As a result of the meetings, when the administrator could identify the parents, those teachers and principals they suspected involved in providing information were threatened with loss of their jobs if they continued to communicate with us. This literally cut off any professional input for the parents. Though we promise confidentiality, it is a rare case when we can get anyone to speak up. When they do talk with us we are informed that anything they have said will be denied, and they would risk perjuring themselves in court if necessary.

When the forums proved unsuccessful we took our issues to the local School Board and requested an investigation and resolution of the issues brought forth. As a result of this meeting along with publicity in the local paper about the violations and our lack of success, the School Board determined they would form a task force to study the "allegations". With strong pressure from the parents we were finally allowed to participate on the task force and to design the portion of the survey that would go to the parents. When the surveys were returned for compilation it was noted that the information on the surveys did not talley up with the population response. It was discovered that 40% of the parents and 20% of the teachers responses had been deleted from the results. The parents protested the validity of the results and demanded that the raw data be presented to them for review and compilation. We were then informed that the raw data had been destroyed. As a result of the outcry of the parents the Superintendent decided to have a private consultant do a study at a cost of $15,000.00 in school funds. The parents were informed that we would have no input as to who would be the consultant, that it would be a random study, and the results would be final. When the survey when out it was discovered that those parents who were still politically active and knowledgeable about special education did not receive the surveys based upon their random selection methods. It was, also, noted that the area in most need of services, that of secondary LD had been left out of the results. The general consensus of the consultant's report was that the parents complaints were unfounded and that the district was "alive and well". No objection was allowed concerning the results or the fact that the second survey did not cover the areas outlined by the parents in the previous survey. This survey now serves as the "Bible" when issues are brought to light.

In preparation for our LEA's forthcoming 5-Year Administrative State Review the parents prepared a report for the SEA committee and requested that the areas that had been addressed to the state in the form of complaints be considered in addition to the review. Our review took place on January 11, 1988 and to date there has been no report issued concerning the conclusions of the review. Though we have requested a report we have been told it was not yet available, but the school district has announced in the newspaper and to its staff that they passed with flying colors. We are concerned that the decision of the committee will be prejudiced in their report since our Superintendent was just honored as Outstanding Superintendent in the Nation, which the State School Board recognized during last month's meeting by presenting a plaque in his honor.

During the past four years parents have attempted to bring about changes in the Local Special Education Advisory Committee (LAC). Several parents managed appointments to the committee and began to make changes. After three years of political struggle changes came about and the committee was filled with a comprehensive group of individuals who represented parents, business leaders, agencies representatives and handicapped individuals. When I was elected chair of the committee for 1986-87 it became apparent the special education department was not happy. When the committee decided not to "rubber stamp" the annual plan that year, and agreed to only if a standing committee was formed to assure that the 22-Assurances that were part of the plan were in effect over the year, the political wheels began to move. The state handbook on LACs was turned over to the city's attorney for review to determine the authority of the district over the committee. It was determined that the Superintendent had the prerogative of appointing the committee, so he decided to disban the sitting committee at the end of the year. No explanations were given, but this, in effect, removed every interested party in bringing about change in special education in the district. The Superintendent then appointed the Director of Special Education as his designee and she has once again filled the committee with hand-selected individuals who support her. We once again have a rubber stamp committee who is uninformed about special education needs. There are no committees and parents have no where to take their issues since the director answers all questions at the meetings concerning any problems.

The State of Virginia's present set of regulations for special education are so ambiguous that when a question arises the law is open to free interpretation. Generally, those interpretations favor the position of the district to fit the situation. These same regulations allow open discrimination by regular teachers, in that these teachers may refuse to teach handicapped children. If a child does have an IEP that requires adaptations in the regular classroom for mainstreaming, the regular teacher is not required by law to accommodate the IEP. So, if a child does succeed in having an IEP written to fit his individual needs, the only probability that it may be implemented is if the student is removed from the mainstream and placed in classes with other more severely handicapped students. Many of our children are quite capable of participating in regular classrooms and need only minor or moderate adaptations and assistance from resource classes, but these children have no options. If they do attend regular classes they are placed as if they have no handicaps with no further considerations. This assures failure for these children and becomes nothing more than a self-fulfilling prophesy. A recent study in the Harvard Educational Review (1988) shows that children who are removed from the mainstream have a scant 2% chance of ever returning to regular classes. As parents, we question how OSEP can approve regulations that are not specific in nature. A simple comparison of the state regulations from North Carolina's exceptional children will give ample proof that Virginia needs to rewrite and clarify their own regulations.

Until this past year filing a complaint with the state was to set up an immediate communication system between the LEA and the SEA. From the time a parent called the SEA and until the parent filed the complaint the LEA had been notified to clean up its act. Therefore, when the problem was investigated the complaint was unfounded. The guidelines on how to file are unknown to parents except in the most simple form and it seems the only ones who know the procedure are the SEA and the LEAs. Due to the lack of clarity of the complaint procedures, more often than not, due to lack of instructions as to how to proceed with filing a complaint the issues the parent brings forth are denied by the SEA as unfounded because of a technicality in filing. The position of the SEA is that when allegations are made it only takes the verbal rebuttal of the LEA to invalidate the complaint. No investigation is made and supportive documentation is not required to prove differently, though the parent is required to fully document their claims. The SEA accepts this type of response without further investigation and documentation from the LEA, though the same complaints have been filed numerous times with the SEA in the same districts. Within the state regulations it states that an investigation will be made of LEAs or withdrawal of funds based upon complaints, due processes, or other reasons. The State of Virginia has never enacted their right to investigate or withdraw funds to date. To date no response has come forth from inquiries to the SEA as to how many complaints, due processes or inquiries it takes to bring about an investigation of an LEA. If the parent is not in agreement with the decision because discrepancies are found in the documentation provided by an LEA during the investigation, or if the parent did not use the appropriate legal term to describe the claim, the SEA will not consider review of the complaint and refers them to OSEP. Filing with OSEP has proven to be an exercise in futility in the past. Inquiries made concerning noncompliance in the state brings forth either no response or an extreme length of time in reponse. Usually, the answer to the complaint can be anticipated as "no cause for action". Case closes.

Administrative Reviews occur on five years and to be conducted in Virginia. It has been documented that districts that were in violation in 1982 were still in violation of the same areas during their 1987-88 five-year reviews. We have questioned the state as to what purpose reviews and letters of corrective action serve if monitoring does not occur. Cathie Muscate, one of the parents in the Rockingham County did a comparative study of eight different LEA's 1982 Five-year Reviews and compared the results with more recent ones

It was found that there was a lack of consistency in determining "non-compliance" vs "substantial compliance with exception" where violations were found. Inquiries were made as to what method the SEA used to determine non-compliance or what formula was used when in one district's 60% error was considered non-compliance where in another district the same percent or greater was ruled "substantial compliance with exception". Does OSEP review the five-year evaluations of school districts? Are there any comparable statistics to determine whether corrective action occurred from the last administrative review? We think not.

Due process is literally unobtainable for parents in Virginia for several reasons. Usually parents do not progress that far due to frustration and lack of information on procedural rights. First, legal expertise is literally void in the private sector, and not considered desirable due to its low financial return. Even if a parent sought legal counsel the cost is beyond the means of most parents and they will not seek that avenue. If they do find counsel the parents usually find themselves in the position of educating their attorney in special education law and the needs of their particular child. Access to free legal counsel through Rights for the Disabled (DRD) is limited. Though DRD has served many children in the state and perhaps because they are understaffed those chilren who have complex cases are passed over. Past history has proven they are highly selective in the cases they represent and we have experienced too many cases excessively delayed and denied because they were not "sure wins" or were politically hot. The advocates that are provided by DRD, who should be assisting our chilren to assure that due process does not have to come about, are inadequately trained in educational law or lack interest in their role. As a result of this, the parent has to be well informed even if an advocate goes with her to assure legalities are not overlooked. We have been informed advocates are chosen from a pool by the Department of Human Resources from other areas, i.e. rehabilitation, to fill vacancies rather than recruiting individuals who are intersted or experienced in this field.

In a recent case I helped develop for due process that had been brought against the parent by the LEA I directed the parent to DRD for legal assistance. The parent went through weeks of struggle trying to persuade them to handle the impending case which she kept delaying because of lack of counsel. Finally, upon the day of her due process she had to release the assigned attorney from DRD due to the negative attitude he felt toward the case and his persistence in determining the outcome as to what "would or would not be allowed by the LEA" before any evidence or witnesses had been presented to determine the decision. This parent was inexperienced in the due process procedures, but persevered and represented her son's case. She won the case, but the district then appealed the case. At this time she managed to find an empathetic attorney who agreed to take only her case, and went on to the appeal. Once again the parent won in favor of her child. After one year, this same parent has once again gone through due process with the same LEA asking for private placement, which she is now paying for due to the unwillingness of the district to provide FAPE to her child after the decision. She secured private counsel for this due process and won private placement from the district. The district is once again appealing the case. Had the parent not taken it upon herself and placed her child in private placement the child would have lost yet another year of education and fallen further behind. Thus far, her son's FAPE has cost her over $15,000.00 in legal fees which is only a portion of what the case cost if personal costs and preparation of documents were included by the parent.

In 1985 I, too, went to due process in behalf of my son. During the proceedings numerous violations occurred. Violations were found against two hearing officers that participated in the case, as well as against the LEA for "excessive" delays which forced the case to go on for nine months. During that time the attorney representing us, who was reputed as being an aggresive advocate for children in educational cases, was politically manipulated in some manner and ceased to protect my child during the hearings, thereby giving away my child's rights. Though the due process was won in favor of my son we called for an administrative review based on the violations of due process procedures, suppression of evidence and denial of access to witnesses. At this time, I had no available legal counsel and had to represent my son. The review was determined in favor of my son and the violations were found in the decision. Within three months of the decision it was discovered that implementation of the program was not occurring. Though the review officer had stated in his decision that if implementation did not occur private placement would be automatic, he had no authority to bring forth the action. From March of 1986 until present we have sought legal assistance for my son. First, we went to DRD who delayed their decision to represent my son and then finally determined they could not due to the political nature of the case. This was stated to me over the phone, but when I asked them put it in writing DRD asserted it was because the case did not have "merit". This was reported to OSEP and was never investigated. In August of 1985 I sought out the assistance of a private attorney and once again my case was turned down due to the political implications in the case. In particular, the problems arose from the legal ramifications and complications arising from the result of an action by my attorney in the previous due process. As a result of lack of legal counsel the statutory time ran out and my son never had an opportunity to exercise his rights. My attempt to bring about FAPE, thusfar, has cost approximately $10,000.00 in legal and preparation fees.

To date, two years later, my son is facing yet another due process because we have to start all over to prove, once again, non-implementation of my son's program based on the same issues of 1985. Again, the LEA is making every attempt to delay and cloud the issues of the forthcoming due process in the same disruptive manner they did in 1985.

Why does this type of behavior continue on the district level? First, there was no action taken toward the LEA for the due process violations by VADOE. There was no punitive action taken against the hearing officers that still sit in those positions. This case was referred to OSEP and no action was taken by them.

Numerous calls have been made to OSEP with no action. Letters have been filed with complaints with no action. When I have contacted my legislators and asked for their assistance OSEP has responded by declaring their interest and responsibility in assuring their powers of enforcement under EHA-B, but have taken no action. At present I am still waiting for a response from OSEP in reference to a complaint filed the first of December 1987. The last week in December a letter was sent that acknowledged my letter and that they would look into the matter. To date there has been no decision to the filed complaint.

Parent Education Advocacy Training Center (PEATCE) is supposed to be available to educate parents in the rights of their child. Even if a parent did discover the service was available it was impossible for them to participate due to the regional nature of the location that they had in the past. When it was determined that PEATCE training centers would be moved from the regional locations to districts parents involved were elated. Unfortunately, the decision of the government was to place the training centers in the hands of the LEAs under the special education departments. Parents in our area protested this change and requested that independent advocacy agencies for the handicapped in the districts oversee the training, but our wishes were ignored. Now that we do have training available in our LEAs it is now controlled and monitored by the districts. Parents will not attend due to the bias inflicted on those running the program. The trainers are now, in effect, employees of the school district. Generally, the staff consists of hand-picked politically-favored parents who support the director. Now that we do have training in special education law we do not have the opportunity for an unbiased presentation of the program which we so desparately need.

Our concern is that OSEP is not monitoring the SEAs, therefore, creating a domino effect throughout the total state which adversely effects every child in special education. That LEAs can boldly defy the law and discriminate against our children is criminal, and the knowledge that the SEAs do not have to interfer only condone their actions.

Though this testimony is written by one parent, if requested this same scenerio would be described a thousand times over in this state, as well as nationally. The ramifications of taking up 'sword and shield' in behalf of our children's rights can be somewhat disconcerting, as many parents would testify.

As a result of my efforts to ensure compliance of PL 94-142, my name has been slandered openly by the city's attorney, my children have been harrassed by their teachers for all the work that has to be done because of my actions, the director of special education has convinced every teacher and principal that I am responsible for their additional labors, my life has been subtly threatened, I have been informed that "any attorney in the State of Virginia who represents anything pertaining to me will be through in law", and last but not least, in the past week in an effort to force me to withdraw the forthcoming due process the city's attorney has threatened to charge me with bribing a witness in the due process and will file in federal court to prosecute me if I do not withdraw.

Though I do not seek rejection, enjoy seeing my children harrassed, accept denial of my Constitutional right to seek counsel or enjoy the thought of enduring the stress of a federal trial, I will not back off and voluntarily give up my children's rights or the rights of any other children in the State of Virginia.

Our children have been and still are being grossly abused as a direct result of lack of monitoring and enforcement of PL 94-142 by OSEP. When OSEP continually approves regulations that are vague and do not insist on clarification, then free interpretation reigns. When complaints are filed with OSEP and no investigative action comes forth, then non-compliance becomes the norm. When OSEP turns their head when excessive waivers are allowed by SEAs for unqualified teaching requirements and programs then educational rights do not exist for our children. How long will OSEP allow open discrimination and denial of educational rights in the face of misappropriation of funds.

TESTIFIED BY:

--(March 30, 1988)

Elizabeth W. Bodner
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NOTE: Documentation available upon request

Mr. Owens. Thank you.

Ms. DeBlaay?

STATEMENT OF MARJORIE DeBLAAY, PARENTS FOR COMPLIANCE

Ms. DeBlaay. So much has been said here this morning that rather than stay with my prepared statement, I intend to just plain talk to you for a short while about some of what I have heard here, respond to it, and compare it with what is in my written statement.

I wish Congressman Bartlett were here. He said he had never heard anyone saying that Madeleine Will or Tom Bellamy had been too easy on the States.

I would like to let him know I think maybe he has not heard from all the people he needs to hear from, and that is from real parents out there who are battling to assure free appropriate education for their children.

Ten years to develop a working monitoring system is totally unacceptable. If your child was in kindergarten when they started development of their system, that child is now halfway through high school, and that is exactly where I as a parent am with a 16-year-old son. I am sorry, Mrs. Will and the Department of Education, I don't have that kind of time for you to wait to develop a working monitoring system.

The promise held out to parents under 94–142 has not been fulfilled, which is why Parents for Compliance was founded. We are a network of parents across the State. We didn't want to become a traditional advocacy group. There was too much work to be done to get ourselves into fund raisers and charity issues.

We are parents who are having similar problems ensuring enforcement of the law. We have also had linkages with parents in other States, including Vermont, New Jersey, New York, California, Maryland, and others, and we could tell you from all the States that the process isn't working in terms of the administration of it, in terms of the procedures used, and in terms of outcomes for students.

I want to very quickly give you a small piece of my testimony. Mrs. Will said this morning that the process for placing students in the least restrictive environment depends on a team coming together and making a decision about how a child will be served and then where they will be placed.

Parents for Compliance's founder is a parent who has taken her complaint to the U.S. Department of Education with an IEP with two signatures on it. By law, that document, at a minimum, would have had to have three signatures on it, in and of itself a violation.

This parent went to a local due process, and after the due process, had contradictory opinions regarding the ability of the system to place her child in what she considered an appropriate placement. Given those contradictory decisions from the two hearing officers, she wrote the State Superintendent of Schools and said, what do I do? He wrote back and said it seemed to be indications that the hearing officer had erred.

She therefore wrote the State Superintendent and asked for a new due process hearing. She never received a response to that letter to this day, and that was back in 1984.

In order to avoid the process of going to court—you know, Congress passed the Attorneys Fees Act, and it is wonderful, but it still costs more money than most parents have to front the litigation. There are not that many lawyers who are going to take the cases on the contingency of winning the cases, especially when we have hearing officer systems in which our hearing officers fall asleep, or as Martin Gerry could testify to in my hearing, they ruled 94-142 inapplicable to the proceedings.

The parents therefore appealed to the U.S. Department of Education and filed a complaint. That original complaint was filed in 1985, and there was supposedly the MOU, memorandum of understanding, between OCR and OSEP about how complaints would be handled.

She received no response to her complaint, and through telephone calls across the State, Philadelphia, and the regional OCR office in Washington, she was finally told to file a separate complaint with OSEP which she did in May of 1985. It took 9 months just to get a letter acknowledging receipt of the complaint, and that came after the parent had a notebook this thick of letters to the Department, to Congressmen, to anyone who would try to help saying, what do I do? The Feds say you have a right to appeal a complaint to the U.S. Department of Education. I have done it. Staff there tell me by phone they have it, but no one will even acknowledge they have the complaint.

So, thanks to Congressman Stan Parris, finally, Mrs. Will wrote Congressman Parris and said she had the complaint and would look into it in January of 1986.

Out of that, OSEP initiated a special investigation of Virginia which Mrs. Bodner spoke to. It was supposed to have been of Virginia. It focused only on Fairfax County. This supposedly was as a result of this one complaint.

According to a letter from Dr. G. Thomas Bellamy to the Virginia Department of Education in October of 1986, he said two issues were to be addressed in the investigation: One, does the Virginia Department have a method to ensure compliance with Federal regulations, and, two, is Fairfax County Public Schools in compliance with EHA-B requirements?

Dr. Bellamy further stated that the role of the Department in the investigation was to determine whether Virginia employed an adequate system for investigation of complaints and determining compliance at the local level and whether, therefore, Virginia had met its statutory responsibility for general supervision.

Repeated negotiations took place between the U.S. Department of Education and the Virginia Department of Education. Finally, in December of 1986, an on-site investigation was conducted.

I read this morning the portion of Dr. Rostetter's remarks on the Fairfax investigation. I wish you could have heard them this morning. I would urge you to look into them and how the investigation was conducted in Fairfax, including self-selection by the school system of only 16 files to be reviewed during that process.

So, the investigation takes place. A report was finally issued, and the bottom line of the report was that Fairfax had made changes in their definition of multiply handicapped, an issue raised by the Schimmel case, changes in their least restrictive environment procedures, and Virginia was told that, in the future, they would have to address the issue of whether all placements were being made in the least restrictive environment and whether categorical placement was happening in Virginia.

No determination was made with respect to the central issues Dr. Bellamy identified in terms of does Virginia have a method to ensure compliance with Federal regulations, was Fairfax in compliance or not. Despite all the publicity surrounding it, nothing in the report says either compliance or non-compliance. It is only findings.

Third, it did not address whether Virginia employed an adequate system for investigating complaints and determining compliance.

Fourth, it did not determine whether Virginia exercised its general supervisory authority.

Our question is, why were no determinations made on those key issues identified by Dr. Bellamy? All 14 other States for whom final reports have been issued were found out of compliance on their general supervision and the other issues which were looked at in Virginia as identified by Dr. Bellamy.

With respect to the least restrictive environment issue, the report said during its on-site review, OSEP was unable to determine whether individual children were being placed in the least restrictive environments, because the files did not contain information describing the basis for the placement decision.

Compare OSERS finding in that report with that in the Texas report. The Texas report, by the way, is an excellent report.

In Texas, the finding was that 52 of 64 student records reviewed either did not contain documentation of justification for removal from the regular educational environment or the documentation provided inappropriate justification for removal. Based upon the findings in Texas, extensive corrective action was required, including things that would allow for reconsideration of those files looked at for those students for whom violations had occurred so that there was redress in those particular cases.

Why was it, though, that with the same finding of lack of documentation in the files in Texas and Virginia, there were corrective actions required in Texas but not in Virginia? We have been advised by people who participated in the process who would lose their jobs if they went public, they fear, that the reason Virginia was not found out of compliance was that our local school board chairman, Mary Collier, with local school system attorneys met with staff from the U.S. Department of Education and with Gary Bauer, former Under Secretary in the Department of Education and White House Advisor to President Reagan.

We have been advised that this meeting took place, and that in this meeting, Fairfax position was that the reputation of a school system is a sensitive issue and that the heat should be taken off of Fairfax County.

The process today for looking at draft reports, keeping them quiet, and negotiating the findings is a politicalization of the process, a politicalization of the process which is having undue impact on us as parents in Virginia. The findings, I am sure, have been negotiated away.

One of the reasons, I am sure, that Texas has one of the strongest reports in the nation is that strong citizen advocacy efforts in Texas allowed them there, under their State Freedom of Information Act, to get a copy of the draft report. Therefore, issues could not be negotiated away as easily as they were in Virginia.

While we have been treated differently in Virginia, we know that the same thing is happening in other places across the country. A complaint was filed by New York parents at virtually the same time the Schimmel complaint was filed in December of 1985. Two months after filing, they at least got an acknowledgement of receipt of their complaint and said that OSEP would be reviewing it.

In talking with staff there, they were asked to provide additional data which they did in April of 1986. In October of 1986, some of those same parents were in Washington on other business and met with OSEP staff to discuss the status of the complaint. They found that staff in the Department couldn't even find the complaint.

So, in November of 1986, they refiled the complaint. There has been no substantive action to their knowledge on the complaint. They have only had the general kind of letters saying we will look into it.

New York, which was originally scheduled for monitoring in 1988, has now had their monitoring moved to 1989. It is our understanding that this will make it 7 years since New York was last monitored.

David Rostetter said that enforcement of the law is being put on the backs of the parents. It is. With the discriminatory application of the procedures, we as parents are left out here to fight as best we can.

We have tried it from all routes. We went to our Governor and said here are the problems. Almost two years later, last Wednesday, a full report was issued by a private independent consultant saying, in effect, that the charges we had brought were right, clearly identified that the State has not met its general supervisory authority.

We know you are looking at a GAO investigation.

I will stop now. Thank you very much.

[The prepared statement of Marge DeBlaay follows:]

STATEMENT OF
PARENTS FOR COMPLIANCE
to
THE SUBCOMMITTEE ON SELECT EDUCATION
of
THE U.S. HOUSE OF REPRESENTATIVES EDUCATION AND LABOR COMMITTEE

with respect to

COMPLAINT MANAGEMENT, MONITORING AMD COMPLIANCE
for
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

March 30, 1988

For further information contact: Marge DeBlaay of PARENTS FOR COMPLIANCE, 5135 Bradfield Drive, Annandale, Va. 22003. 703-425-3279

PARENTS FOR COMPLIANCE (PFC) is a coalition which crosses disability lines and which was established to ensure that the federal and state government enforces compliance with P.L. 94-142. PFC was born when I met another mom, Betty Schimmel, and I heard the story of her lone fight to get the Virginia and U.S. Department of Education to address procedural violations in the placement of her handicapped son, Jim Schimmel.

Since our first meeting together, we have heard from other parents and have a mailing list of 400 families in Virginia who have requested our assistance in their fight to ensure a free appropriate education for their child. We have also worked with parents in Vermont, New Jersey, South Dakota, New York, California and Maryland. We also participate in the national Least Restrictive Environment Coalition which includes representatives from another 5 states. Through these efforts, and through my six years on the board of the Autism Society of America, including 4 years as their Government Affairs Chairman, I think I can give you a good perspective as to what is happening to families and children across the country.

What is happening is that the P.L. 94-142 isn't working the way the Congress intended. Administratively, proceduraly and in terms of programming for children, the requirements of the law are not being met. I will use the case study of my Co-founder of Parents for Compliance today to illustrate how the process isn't working, and then relate what has happened in the Schimmel case to what we know is happening across the country. In listening to the Schimmel case, ask yourself, if this could happen to one family living in the Washington area who has been able to tenaciously pursue their child's best interest through the mechanisms established by the Congress, what is happening to families who have not been able to do what the Schimmel's have done?

Case Study of One Family

The Schimmel case began in the Spring of 1984 when the Fairfax County Public School system determined that Jim Schimmel, then classified as Learning Disabled (LD), should be placed in a residential program and that his label would need to be changed to Emotionally Disturbed (ED) to get a residential placement. These decisions were made without benefit of an IEP meeting - the process by which a child's placement is to be made under P.L. 94-142. Mrs. Schimmel was called to a meeting in July of 1984 to sign "referral forms" to seek a residential program for her son. When she arrived at the meeting, she was presented with a prepared IEP. When she said she was not ready for an IEP meeting, she was informed it was merely formality, and a full IEP would be developed at the school, once the child was placed, but she must sign the document her son would not be reffered.

As it was July, and the family had been informed their son would not be allowed to attend the private school he had been placed in the previous year, Mrs. Schimmel signed the "referral IEP" under duress to try and assure her son would have a place to attend school in the fall.

That "referral IEP" has only two signatures - which in and of itself is a procedural violation as not all required parties under law participated in the process. No written notice of an IEP meeting was ever given the parents as required by law - instead, Mrs. Schimmel was brought to the school under false pretense to sign a "referral form". The Schimmel's then visited, at their own expense, the school for which Jim was being considered. The visit included an overnight stay for Jim. While there, Jim saw physical abuse of students and was afraid to return to the school. The parent's asked their doctor's to review the proposed placement and doctors and parents agreed that be detrimental to Jim's mental health. The parent's informed FCPS of Jim's fears of the proposed placement and the doctor's concerns. FCPS informed Mrs. Schimmel that she was in "...a better position to find an appropriate placement for Jim than we are."

Mrs. Schimmel initiated on her own just such a search for an appropriate program for her son. Remember, at this time, the only IEP which exists is the pre-prepared "referral form" to the one school FCPS had previously decided upon. Mrs. Schimmel, after an exhaustive and expensive search, found the type of program at the East Hill Farm and School in Vermont as recommended by Jim's doctors. But FCPS refused to place Jim there as the school was not on the Virginia list of approved schools for the handicapped. The school, however, is an approved private school in Vermont and Vermont places handicapped students at East Hill when the IEP goals and objectives can be met there. The Schimmel's thus initiated a due process proceeding for placement at East Hill. The full story of the Schimmel's efforts to meet Jim's unique individual education needs needs is contained in Attachment 1, Statement by John Schimmel dated July, 1987.

The Schimmel's received contradictory opinions regarding placement at East Hill from the local and state reviewing due process proceeding. In addition, the State Superintendent for Schools in a letter to the Schimmels indicated the hearing officer had erred in their case. Given the flawed procedures in placing JIm and the contradictory opinions regarding placement at East Hill, the Schimmels, in January of 1985 filed a complaint with the U.S. Department of Education which was sent to the Office of Civil Rights in Philadelphia. In May of the same year, Mrs. Schimmel, after repeated calls to education staff in

Philadelphia, Richmond and Washington, was finally advised by OSER's staff to send a second complaint (Attachment 2) directly to them as the Memorandum of Understanding between OSER's and OCR was not being followed. It was as though the complaint entered a BLACK HOLE. Mrs. Schimmel did not even receive acknowledgment of receipt of her complaint to OSERS until February, 1986 - 9 months later.

The 9 month odyssey of Mrs. Schimmel's persistent efforts to receive even an acknowledgment to her complaint included frequent trips to Capitol Hill, weekly phone calls to OSERs, monthly letters to both Hill and Department staff. This despite the EDGAR requirement for a response to a complaint within 60 days. Finally, the acknowledgment of receipt of her complaint came in response to a letter from Congressman Stan Parris to the Department in October of 1985 (Attachment 3). Mrs. Will responded to Congressman Parris on January 31, 1986, saying that the Department was aware of Mrs. Schimmel'scomplaint and would attempt to reach resolution as soon as possible. The Congressman then forwarded this response from Mrs. Will to the Schimmels.

Why would a family develop a notebook full of letters to Congressman, and the U.S. Department of Education in an attempt to resolve a complaint over an extended period of time. The Schimmel's did so as the procedural violations in and of themselves should have been adequate to vacate the decisions of the Fairfax County Public School - as litigation is an expensive process for families. While Congress has passed the Attorney's Fees Act, families do not have the money to front litigation. The Schimmels therefore repeatedly, until they were afraid they would lose their right (due to statute of limitations) to file in court, unsuccessfully attempted to force the U.S. Department of Education to act to resolve the procedural violations.

To this date, almost 3 years later, the Schimmels have not yet received resolution of their individual complaint. The courts, now having decided the case up to the appellate level, have refused to address the procedural violations in this case. The unresolved issues include:

a. Failure to adhere to federal requirements regarding the development of Jim's IEP,

b. Placement before IEP development; and,

c. Identification of the primary handicapping condition of Jim Schimmel.

OSERS did initiate a special investigation of Virginia, looking at Fairfax County in particular after intensive lobbying by PARENTS FOR COMPLIANCE. This special investigation was initiated in August of 1986. According to letter from Dr. G. Thomas Bellamy to the Virginia Department of Education (VaDOE) October 17, 1986, (Attachment 4), the two issues to be addressed in the investigation are:

1. Does the VaDOE have a method to ensure compliance with federal regulations; and,

2. Is Fairfax County Public School in compliance with various EHA-B requirements?

Dr. Bellamy further stated that the role of the U.S. Department in the investigation was to determine whether Virginia employed an adequate system for investigating complaints and determining compliance at the local level and to ensure VaDOE exercised its general supervisory authority.

After repeated negotiations between the U.S. Department of Education and VaDOE, the investigation was finally conducted in December of 1986. The final report was made available to the public on May 18, 1986 (Attachment 5). The bottom line of the report was that Fairfax had made changes in:

a. Their definition of multiply handicapped to exclude the requirement that one of the handicapping conditions be mental retardation (The Schimmel's had maintained that rather than having their son labeled Emotionally Disturbed, he should be labeled multiply handicapped as he had learning disabilities, language deficits due to neurological deficits, other health impairments/epilepsy, and emotional problems as an overlay to these problems - FCPS had maintained that to be multiply handicapped a child also needed to be mentally retarded);

b. Changes in Least Restrictive Environment Procedures;

c. And other issues VaDoe needed to address in further investigations (i.e., categorical placement and LRE placements).

NO DETERMINATION WAS MADE WITH RESPECT TO THE CENTRAL ISSUES IDENTIFIED BY DR. BELLAMY AS THE KEY ISSUES OF THE INVESTIGATION. THAT IS, THERE WAS NO DETERMINATION OF:

1. DOES THE VaDOE HAVE A METHOD TO ENSURE COMPLIANCE WITH FEDERAL REGULATION;

2. IS FAIRFAX COUNTY PUBLIC SCHOOLS IN COMPLIANCE WITH VARIOUS EHA-B REQUIREMENTS?

3. WHETHER VIRGINIA EMPLOYED AN ADEQUATE SYSTEM FOR INVESTIGATING COMPLAINTS AND DETERMINING COMPLIANCE AT THE LOCAL LEVEL; AND,

4. WHETHER VIRGINIA EXERCISED ITS GENERAL SUPERVISORY AUTHORITY.

Why was no determination made with respect to these central issues of the investigation? FFC has obtained copies of the monitoring reports for the 14 other states for which final reports are available to the public. Of those 14, ALL were found out of compliance with respect to not maintaining adequate monitoring procedures and 11 were found to not be adequately using their general supervisory authority. (See Attachment 6). In reviewing Least Restrictive Environment (LRE) issues in Fairfax, OSERs said:

> "During its on-site review, OSEP was unable to determine whether individual children were being placed in the least restrictive environment because the files did not contain information describing the basis for the placement decision. FCPS's new procedures are currently being implemented and will be used in developing new IEPS and placements for the 1987/88 school year. VaDOE has informed us that it will be conducting a comprehensive monitoring review of FCPS this fall. By that time the new procedures should be fully implemented and it will be possible for VaDOE to determine whether their implementation ensured that the requirements of the EHA are being met. Effectively reviewing and determining whether local educational agencies implement policies and procedures in a manner consistent with the requirements of the EHA is an essential component of VaDOE's compliance with its responsibility under Section 612(6) to ensure that the requirements of the EHA are carried out and to exercise general supervisory authority. Therefore, as part of its state monitoring role, VaDOE should at the time of its review consider whether FCPS' procedures meet the statutory and regulatory requirements on the issues raised by parents with respect to the following specific requirements." Page 3.

Compare OSERS finding on LRE in Fairfax and Virginia with that contained in the Texas report. No files in Fairfax contained documentation with respect to placement in the Least Restrictive Environment. In Texas, 52 of 64 student records reviewed either did not contain documentation of justification for removal of children from the regular educational environment, or provided inappropriate justifications for removal. Based upon the finding in Texas, extensive corrective action was required, including detailed procedures on LRE to be provided to all public agencies, a detailed training plan to implement the changes, assurance that all appropriate personnel within the state have received training, written verification within one year of the number of changes in placement resulting from the new procedures, and that for sites visited, corrective action plans will be developed to ensure placements in those sites comply with appropriate standards and are in compliance (Page 13).

We ask again, why were the central issues identified for review not addressed in the final report and why has Virginia been treated differently than Texas, and other states monitored? We have been advised by people who are sure they would lose their jobs if they went public, that the week after the U.S. Department of Education investigated Fairfax County, Mary Collier, FCPS Board Chairman requested a meeting with Gary Bauer, former Under Secretary in the Department of Education and White House advisor to President Reagan. We have been advised that when this meeting took place, the FCPS attorney and Mrs. Collier, in discussing the situation and citing the reputation of a school system as a very sensitive issue, requested that the heat be taken off Fairfax County Public Schools. We request that the Subcommittee help us investigate this issue, whether such a meeting took place and why discriminatory application of monitoring procedures have been utilized in Virginia. The answers to these questions become even more critical as the Governor of Virginia released last Wednesday an independent report on the state of special education in Virginia conducted by a consultant. The report clearly identifies the problems with monitoring in Virignia, stating that "Interviews with State Department staff indicated that there is very little structure to ensure that decisions relative to compliance or non-compliance are made consistently....Each monitoring staff member appears to be solely responsible for the decisions where he or she serves as the team leader on a local division review....Based upon the documentation provided by the State Department, it was not possible to assess whether the local divisions' written policies and procedures contained within their Six Year Plans and Annual Plan amendments are in compliance with the federal requirements."

While we know that the way Virginia has been treated is different than other states reviewed, we know the problems in Virginia are the same problems found around the country. The Department's own monitoring reports indicate the extent of the problems. We know that parents in Georgia have experienced similar problems in filing complaints. OSERS procedure is to send complaints back to a state for review. The Georgia ARC asked what the federal procedures were if the complaint were against the state. The response from OSERS was that they didn't have procedures on that issue. When Georgia requested time frames for OSERS review of their complaint, they were informed that there were no time frames for a response and Georgia still has not received resolution of their complaint. The New York ARC has had a similar experience with the complaint process. Parents in Illinois, trying to seek enforcement of P.L. 94-142 in their state, have through an education consumer task force in their state proposed state legislation that would force the state school board to enforce the law (Attachment 7). Parents in Vermont have taken approval of the state plan into federal district court. These actions would not be necessary if the U.S. Department of Education were enforcing the law. Enforcement of the law is being placed in the hands of individual parents in court actions. In the Schimmel case, if the U.S. Department of Education had ruled on procedural violations, the parents would not have a $30,000 legal fee.

And finally, while OSERS is forcing states to develop comprehensive complaint management procedures, their procedures have changed constantly over the last several years. They also require states to inform parents of the appeal from state decisions to OSERS. Yet in a statement by Jeff Champagne to the Least Restrictive Environment coalition March 6, 1987, (Attachment 8 - Page 11), he stated that the decision of whether OSERS would review a complaint or not depended upon whether it raised a question of law with facts agreed upon. If the complaint only addressed a dispute over what the facts are, they won't take the case. Then why force states to tell parents they can appeal their decision to the feds? What are parents to do?

I ask as I am now in the same position as Betty Schimmel was in 1984. I have filed an extensive complaint with the Virginia Department of Education. One of the issues I have addressed in my complaint is that my son has been placed in a school which is not approved by Virginia to serve students with autism, which is his primary handicapping condition. The state refused to even address this issue in responding to my complaint, yet one of the central issues in the Schimmel case was whether her son must be placed in a school approved by the Virginia Department of Education. Clearly, this is discriminatory application of the state requirement for placement in a school approved by the Virginia Department of Education. But when the Schimmel complaint has not been addressed 3 years later, why would I, or any parent, want to appeal to OSERs for a review? Or is that what OSERS wants - no complaint process at the federal level?

The monitoring reports of the U.S. Department of Education in several instances requests states to recover funds from local education agencies (LEAs). This administration came to town saying education was a state and local responsibility and a federal presence was not required to ensure that children would receive a free and appropriate special education. Their own monitoring reports to date show just the opposite - the requirements of the law are not being met. Yet the U.S. Department of Education with their extensive documentation of non-compliance at the federal level continues to approve state plans and send federal funds. What is a parent to do?

Addendum to
PARENTS FOR COMPLIANCE
Statement to The Subcommittee on Select Education
of
U.S. House of Representatives Education and Labor Committee
March 30, 1988

We were finally able to talk with parent representatives in New York on March 29, 1988, after the full draft of our statement was prepared. We were asked to share with the Subcommittee that a major complaint was filed with the U.S. Department of Education in December, 1985, with respect to lack of placement of students in the Least Restrictive Environment (LRE). As yet, the issues raised by that complaint have not been addressed and there has been no resolution of their issues.

New York was originally scheduled for a monitoring review in 1988, and the parents in New York attempted to speed-up the original review to either 1986 or 1987 based upon their filing the complaint in 1985. Two months after filing, they received a brief acknowledgement of receipt of their complaint, stating that OSEP would be reviewing it. They received no other response and in April of 1986 sent a second thick package, providing the Department with additional data. They had been encouraged to do so by staff in the Department who are no longer there.

In October, 1986, parents met with staff in Washington and stressed, again, the additional violations of LRE they had submitted to the Department. OSEP approved the New York State Plan. The response of OSEP was that they had been working with the New York Department of Education and OSEP had been assured that New York was doing everything possible to bring the state into compliance. During the meeting in Washington, parents also learned that staff in OSEP could not find the material New York had filed with them. Therefore, in November of 1986, the complaint was refiled. Again, a brief acknowledgment was received. Parents continued to correspond with the Department, but received nothing in the way of substantive responses. Parents have now been notified that even the 1988 monitoring scheduled for New York will not take place until 1989, despite their repeated efforts to bring violations to OSEPs attention. While parents believe there has been some progress in New York, they would like to ask the Subcommittee to investigate why New York will not now be monitored until 1989.

Mr. **Owens**. Thank you both for cutting through the philosophical, theoretical, statistical jargon and getting straight to the heart of the matter. What you reveal is not pleasant at all.

What remedies would you recommend for Congress?

Ms. **DeBlaay**. That is the last sentence I was going to try to get in there yet. One of the things I know that GAO is doing is I understand that management issues at the Department—I am a Federal Government employee myself. I am here on leave this morning. I have been studied to death by GAO at my agency. I think there has been very little done in terms of comprehensive review of the implementation of this Act. I think it is time for a full GAO review of what has happened, what is happening in the States, and I think there are several ways that could be looked at and done.

We have suggested a case study of several States. I talked with GAO staff about how you could target States to have a representative sample. I would like to have that explored.

Mr. **Owens**. If IRS were administered the way this Act is administered, we wouldn't get any taxes collected, would we?

Ms. **DeBlaay**. How did you know it was IRS? I didn't say it. No, we wouldn't.

Mr. **Owens**. I didn't know you came from IRS. I was just thinking of the haphazard, lackadaisical, criminal way in which they just don't enforce the law results in almost no Federal presence. There is no carrying out the intent of Congress.

Would you recommend that we have amendments to the law which would require fining the officials who are responsible for this kind of conduct? If they had a fine, if they were found out of compliance, or maybe imprisoning some if they don't—it is a very serious matter, I think, and the kinds of games that are being played can be played on and on forever.

Ms. **DeBlaay**. I will tell you that when I worked for the Department of the Navy, when you had funding problems and deficits, you could go to jail, and it was in the law.

I don't know what that issue is, but I think it has to be looked at. I remember when deregulation efforts were first started by this administration, and everybody kept saying to me we can't do anything. All we can do is cut off their funds, and they would love that, because they don't want to spend money doing these things.

I do think that the code of ethics for government employees requires them to uphold enforcement of the law. That is as part of the code of ethics, and I think it is something not to be taken lightly, either.

The other thing I think you need to look at is the complaint management issue. They say they have no authority to investigate. They have made several States put into their complaint management systems that you have the right of appeal to the U.S. Department of Education. It is of grave concern to me, because I have a complaint which has come out of my State, and they have applied the law absolutely totally oppositely to me than it was applied to the Schimmel family, my co-founder of Parents for Compliance.

My only avenue is to appeal that to the U.S. Department of Education. Three years after Mrs. Schimmel filed her complaint, there has been no absolute resolution whatsoever.

Why in the world would I or any other parent in the country go ahead and appeal to the U.S. Department of Education? They have no written procedures even that let parents know what is supposed to happen with that process, and I think it is because they would just as soon the process went away.

Ms. **Bodner**. I would like to say something, say, at the lower level. In my testimony that I sent to you, I outlined what happens when an individual like myself attempts to bring about compliance with the law, and I believe Mr. Rostetter was very correct in that the responsibility has been placed on the parent.

We need protection of witnesses. We need some way to protect the teachers. Our teachers will perjure themselves on the stand at due processes. You know that any evidence that you have will be tampered with. You have no way of assuring that the document will be the same document when it goes to due process. Our witnesses are terrified.

As a parent, I have been threatened with my life, and it is in a very subtle way. I have been threatened with my life, attempts have been made to tamper with my phone, and I have been informed by an attorney just recently that anyone in the State of Virginia, an attorney in the State of Virginia representing me, will be through in law in the State of Virginia. And the last but not least has been that I have the City Attorney trying to charge me with bribing a teacher which is probably about as far away from my mind as anything that could ever happen in order to get me to dismiss the second due process for the same child two years later in violation of the law.

I face a State court action in which I will challenge the gentleman. My son will not be served, the Department, the rights of the disabled as a result of this allegation, unproven, uncharged, has dropped the case on behalf of my son. My son has no representation again for a due process.

This is what happens. I do not usually relate personal experiences when I get out in a public situation, but this is only the series of things that happen. The children are harassed. Teachers attack. They are embarrassed. Teachers are attacked themselves. They are threatened with their jobs.

When we went public, when we went to the Superintendent, any teachers that they identified that may be working with the parents were contacted the next day and threatened with their jobs if they communicated with us at all.

We have a conspiracy going on. We have a collusion between the State and the LEA's, and what I suspect is that it is also happening with OSEP and the State.

It is criminal, and the people who are suffering are the children. They are suffering.

Mr. **Owens**. Well, Mr. Bartlett, you missed the testimony, but do you have a comment?

Mr. **Bartlett**. Well, I have reviewed the written testimony, and I appreciate your testimony.

So, let me try to sum it up. Was it someone from OSERS who threatened your life, Ms. Bodner?

Ms. **Bodner**. No, we start with the local level. It starts with——

Mr. **Bartlett**. Was it Madeleine? Did she threaten your life? I mean, I am——

Ms. **Bodner**. No, no, no. It starts—I am sorry you weren't here for the testimony—it starts at the local level. It starts in a very subtle way. First, your children are affected. They generally begin to take services away from your child if you have ever gained those services. If you are going in to fight for those services, you then are assured you will never get the services.

They force you into a due process situation in which the due process never comes about. The initial due process I had in 1985 went on for nine months. I find it very interesting that a nine-month due process which was founded at the administrative review level to be in excess and harmful to the child, detrimental to the child's welfare, that the SEA did not take action against the LEA for this violation.

I had two hearing officers, one that had been dismissed. I refiled and did an administrative review for violations of due process rights under the law. They were found in grave violation of due process proceedings. The State of Virginia took no action whatsoever against those hearing officers. They are still sitting today. They are the ones, in fact, that she refers to in the other cases.

I wrote to OSEP. I filed with OSEP, and OSEP said under the conditions, we feel we cannot react on this; it is unfounded.

Now, when you cannot get due process under the law, I think you have a problem. When you are told that in a laughing way—and a little fact that parents find out what is rumor is generally true. What is passed down from administration is a lie. We listen very carefully to rumor or implied, and when you are told that it would be a laughing matter as to how long it would take to find out how many people downtown have contracts on your life, that is not something to be taken lightly.

But when it goes further, when you are denied your constitutional right to seek counsel and you have been informed in the State of Virginia that they will not represent Mrs. Bodner's cause or you will be through in law, that is a denial of my constitutional rights. They have denied my child, and now they have denied me.

Now, we have to abide by the law. There is a law. My child is required to go to school by law. But my child is being harmed. Other children are being harmed. In our school district, there are 4000 children that are suffering. Our payment is to be tormented, teased, threatened to back off, and I won't do that. I just won't do that.

Ms. **DeBlaay**. And I think, really, a lot has been made of Virginia, how much effort we have had to put in it, are we maybe just a bunch of crazy parents, but it was the Governor's independent private consultant's report that was released that they tried to keep from releasing and was finally released under Freedom of Information last week where the Richmond Times headline was "Baliles Says Special Ed Critics Right."

They can't deny it any longer. The evidence is here in this notebook as to what the problems are in Virginia, and this is only some of them. They didn't have time to do all of them.

If a private consultant can go in and find them out of compliance, why can't the U.S. Department of Education do it? With a private consultant, we as parents are left again in the position of trying to make sure that the State does something. We can't get corrective actions with the Federal Department.

Mr. **Bartlett.** Has Virginia had its monitoring review?

Ms. **DeBlaay.** Virginia had a special review conducted in December of 1985 at which they looked only at Fairfax County, and I would again, since you weren't here, urge you to read the second of David Rostetter's comments that deal with how that investigation was conducted, including self-selection by the local school system of 16 files for review, 16 files out of a school system out of 14,000 handicapped students, no on-site visitations, no discussion with any other personnel in the school system. It is not a terrific way to do a report.

Even with that, they found documentation that shows that—well, there was no documentation is what I mean to say. There was no documentation in the files on placement.

In the State of Texas, they didn't find documentation in the files there, either. However, extensive corrective action was required of Texas, not of Virginia. And that corrective action included opportunities that would include redress for students who had been harmed by previous procedures.

We have no way to get that in Virginia when OSEP will not make that kind of finding in their report on us also.

Mr. **Bartlett.** So, OSEP has not commenced a regular monitoring review?

Ms. **DeBlaay.** Well, we don't know. Only one school system wouldn't be a regular review, we guess. We don't think that is adequate to look at a State, and every time they put out a list of reports, there is always an asterisk down at the bottom that says, "Virginia, special monitoring report."

Mr. **Bartlett.** Thank you.

Thank you, Mr. Chairman.

Mr. **Owens.** Thank you, again. I must confess that I am not easily shocked, but I am shocked at some of the things I have heard from the two of you. I do appreciate your testimony.

Ms. **DeBlaay.** Thank you for having us.

Mr. **Owens.** The hearing is now adjourned.

[Whereupon, at 1:58 p.m, the subcommittee adjourned, to reconvene subject to the call of the Chair.]

[Additional material submitted for the record follows:]

nci

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Ira C. Herbert
chairman
Corporate Advisory Council

April 13, 1988

The Honorable Major Owens
Chairman, Select Education Subcommittee
518 House Annex #1
Washington, DC 20515

Dear Mr. Chairman:

The recent report Toward Equality from the Commission on the Education of the Deaf contains a number of recommendations pertaining to television captioning. We have studied this report carefully and prepared comments containing our views of its recommendations. Knowing that you have held a hearing on the Commission's report, we believe that our comments may be of interest to you. Enclosed is a copy of our comments which we believe could be helpful to you and your Subcommittee and we therefore ask that they be included in the Record of your Subcommittee's hearing.

If you have further questions regarding our area of interest, please do not hesitate to contact us.

Sincerely,

John E. D. Ball
President

Enclosure

nci
NATIONAL
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INC.

COMMENTS OF THE NATIONAL CAPTIONING INSTITUTE, INC. ON "TOWARD EQUALITY" THE REPORT OF THE COMMISSION ON EDUCATION OF THE DEAF

INTRODUCTION

The National Captioning Institute (NCI) appreciates this opportunity to comment on the final report of the Commission on the Education of the Deaf, "Toward Equality." Specifically, NCI presents its detailed comments on those recommendations in Chapter 6 of the Report, "Technology--Progress and Potential." Following those comments, NCI presents a 4-point plan of specific actions which could be taken by the Federal government and have an immediate and positive impact on captioning services in the United States.

The Commission has thoroughly examined a number of issues related to captioning. It devoted a considerable amount of time studying this critical service to the nation's hearing-impaired population and, throughout its year-long examination of these issues, provided ample opportunity for many different viewpoints, including those of NCI, to be presented. We believe the Commission's recommendations accurately reflect the opinion of hearing-impaired persons that captioned television is a vital aspect of their daily lives. As one hearing-impaired person observed in regard to television programs, "captions are as essential to a hearing-impaired person as sounds are to a hearing person."

Inherent in the Commission's report and its recommendations is the need for a greater Federal role in establishing an affirmative action plan that will lead to more widespread captioning of broadcast and cablecast TV programs, as well as those materials produced with Federal funds, including those presented in public places. A strong affirmative action plan by the Federal government would ensure that hearing-impaired people will have full access to captioned video materials, including those produced by the private sector, within the next few years.

CAPTIONED TV SERVICES

NCI fully supports the Commission's goal of increased captioned programming and accessibility as stated in its Recommendation 40. NCI concurs with the Commission's position that the amount of captioning to be provided by broadcasters and cable-TV programmers should be determined by the Federal Communications Commission (FCC) itself. Recommendation 40 is fully consistent with NCI's corporate Mission which states in part that **NCI operates "to provide hearing-impaired people with access to all television programming..."**

The Commission's report states that there are three factors which impede the movement towards a self-sustaining captioning industry: " (1) the lack of mandatory captioning requirements, (2) the current mechanism for distribution of federal funds to support captioning, and (3) the low number of decoders purchased by consumers, resulting in a lack of commercial incentives for private funding of captioning services." (Final Report, Page 114)

While the FCC investigates the economic and regulatory implications of mandatory captioning, and while it determines how and in what time frame additional captioning is to be implemented, NCI believes that there are positive measures which can be taken, with Federal assistance, which can remove many of the impediments caused by the above mentioned factors and assure that the steady increase in captioning continues unabated. Additionally, steps should be taken which can assure continued growth even in the face of possible broadcaster actions which might seek to delay the imposition of mandatory requirements.

It is important to recognize that the growth of captioned programming on the broadcast networks, cable TV and on home video has far outpaced the growth in homes with decoders, where closed captioned TV service can be seen. This steady increase in programming is a result of the increased commitment of the television industry to provide captioning, despite the relatively small audience size. For example, the entire prime time television schedule is currently captioned on ABC; recent expansion of the NBC and CBS commitments to the captioning service has increased the total amount of prime time captioned programming on the three major networks to almost 80% of the full schedule. This broadcaster support for the captioning service, occurring during a time when the number of decoder homes has been slow in growing, demonstrates that if significant audience growth occurs, the television industry will continue to respond to the hearing-impaired population by captioning increasing amounts of programs.

Factors which can drive substantial audience growth include:

- lower cost decoders, including the availability of a built-in TV/decoder;
- greater public awareness of the captioning service;
- widespread recognition and use of captioned television as an effective educational tool; and
- promotion targeted at other populations that can benefit from the service, including those persons learning English as a second language

Federal support of the development of the technology leading to a decoder module which could be integrated into television sets at a small incremental cost to the consumer would help create an audience sufficiently large to attract a substantial increase in private sector support of the captioning service even while the FCC considers the mandatory captioning issue. Federal funds for this critical activity should be expanded during FY 1988 and FY 1989. (see NCI comments on Recommendation 42, Page 7).

A strong public awareness program, designed to inform the public about the captioning service, is a critical need towards the goal of building the audience for the service. The Department of Education has made a start in this direction during FY 1988. NCI suggests expanded Federal support for awareness activities in FY 1989.

Research substantiates the Commission's contention that "the benefits to *all* viewers, including persons who are deaf, the growing population of elderly persons, and minority groups who are learning English as their second language." (Final Report, Page 116) Additional research studies should be undertaken in FY 1989.

Another way to increase the private sector support of captioned television programming during this interim period would be to use Federal funds as an incentive for broadcasters to voluntarily share in the costs of captioning. It should be noted that the U.S. Department of Education (DOED) has played a significant role in launching and expanding the national closed-captioning service. In the early 1970's, the Public Broadcasting Service undertook the development of the closed-captioning technology with funds from the then U.S. Department of Health, Education and Welfare (HEW). NCI was established by Congressional mandate in 1979 to provide closed captioning services to the television industry for the benefit of hearing-impaired people. HEW provided NCI with a three-year, annually declining operating grant. Since that time, the successor to HEW, the Department of Education, has awarded Congressionally-earmarked appropriated funds for television program captioning and decoder subsidies and development on a competitive basis.

The Department of Education has continued to develop many significant initiatives that have expanded the closed-captioning service and benefited hundreds of thousands of hearing-impaired captioning viewers, despite limited funds. To illustrate, in 1982 DOED allocated funds so that news and public affairs programs could be captioned. This led to the real-time captioning of "ABC's World News Tonight," enabling hearing-impaired people to understand more fully the significant events of the day. Continued funding has made available additional news and public affairs programs; hearing-impaired viewers now have a choice of captioned evening news on all three commercial networks, as well as access to a variety of similar commercial and public TV programming.

DOED has also been at the forefront of innovative ideas to expand the closed-captioning service. As an example, the Department has recently funded grant projects designed to initiate closed-captioning news services at the local television station level across the country. NCI was awarded a grant to assist KGTV, the ABC affiliate in San Diego, in starting captioning of the local news. The Department recently announced that it would fund ten additional local news captioning projects during this fiscal year. In each case, the Federal funds are to be matched with private sector funds, and at the expiration of the three-year grant period, the local station is to find private sector funding for continued captioning . It is evident that many more TV stations want to provide this service to hearing-impaired viewers in their communities. Congress should consider appropriating funds specifically earmarked for local captioning initiatives that encourage stations to voluntarily caption local programming.

NCI strongly endorses the Commission's suggestion that additional funds for captioning appropriated through the Department of Education should be "distributed with the requirement that awarded funds be used to secure private sector funding commitments." (Final Report, page 118) NCI recommended this position in its formal submissions to the Commission, and has successfully used Federal funds obtained through competitive grant awards to initiate shared funding arrangements with program producers. These efforts have created an ever increasing volume of captioned programming by stretching the available Federal funds over more programs, and have persuaded many programmers to begin paying for captioning.

NCI strongly urges that Federal funds should be used to encourage private sector companies to join the closed-captioning service; captioning should be a shared responsibility among all segments of the television industry and should not solely be underwritten by the Federal government. For example, using DOED grant funding to caption children's programming as an inducement, NCI has been successful in securing funds from the private sector for additional programming. In addition, NCI has negotiated shared-funding arrangements with the CBS network for the captioning costs of "The CBS Evening News with Dan Rather" and "The CBS Saturday and Sunday Evening News."

The Commission report, in its Recommendation 41, suggests that a separate entity --a "Corporation for Closed Captioning"-- be established for distributing Federal captioning funds. NCI believes that the Commission's recommendation may be based on claims of unfair competitive procurement practices on the part of DOED. The report cites an instance (Final Report, Page 117) where private sector captioning funds for syndicated programs are alleged to have dried up as a result of a DOED grant competition and subsequent award to a captioning agency other than NCI of $950,000 for the captioning of syndicated programming. However, there are many examples of private sector involvement in captioning that took place even though companies were aware of the availability of government funds. To illustrate, NCI was in the process of negotiating a captioning contract with the producer of "The Oprah Winfrey Show" when the Department of Education announced that Federal funds would be available for captioning such programs. Even though the producer was well aware of the Federal initiative in this area, a decision was made by the producer to proceed with captioning using private funds. More recently, DOED proposed using Federal funds to caption sports programming. Even though this Federal initiative was widely known in broadcast and advertiser circles, NCI was able to secure private sector funding to caption both the Winter and Summer Olympics in 1988, a total private sector funding commitment which provides nearly 200 captioned hours of captioned Olympics coverage.

NCI concurs with the Department of Education's position that the current open and competitive manner in which funds are distributed is basically sound, with an already established peer review process which ensures fair and open evaluation utilizing technical experts from both within the government and from the field to review grant applications.

NCI believes that the establishment of a separate entity would not be a cost effective way to assure greater private sector participation in captioning. Administering the distribution of funds in a manner suggested in the Commission's report, with funds dispersed at the local station and cable company level, would require a huge overhead burden; there are more than 1,000 TV stations and almost 9,000 cablecasters who could be eligible and competing for captioning funds. The effective administration of such a program, assuring an accountable and carefully monitored use of funds would undoubtedly siphon off funds which could otherwise go directly toward captioning services. The effect of this kind of "shotgun" approach would make it difficult to assure captioning of the national programming which can be accessed by most American homes. A new bureaucracy established for this purpose would clearly not be in the best interests of hearing-impaired viewers.

The Commission's emphasis on competitive forces with the captioning industry does not address the underlying necessity to assure that captioning quality, in terms of correct and consistent grammar, is maintained across the full spectrum of materials that are captioned and which may be used in educational settings. The issue of quality service needs to be addressed on a continuing basis by the Federal government.

As an alternative to Recommendation 41, NCI suggests that the following steps be taken by DOED to maximize the positive use of Federal captioning funds:

o require that Federal funds be used to secure private sector funding commitments for captioning from broadcasters, producers, advertisers, and others;

o establish criteria which ensures that Federal captioning funds are used to maximize the number of captioned programs. Potential grantees should be required to indicate how many additional hours of captioned programming would be made available as a result of using the Federal funds as leverage;

o establish criteria which ensures that consistent high standards of quality are imposed upon those receiving Federal captioning funds; and

o ensure that Federal funds are not used as a substitute for already established private sector funding commitments.

NCI believes that in a short period of time, and while the FCC determines whether to initiate mandatory captioning, this alternative will prove to be the most effective way of maximizing the use of Federal funds for captioning.

While the FCC investigates the best possible method for increasing the amount of captioned programming, it should, as the Commission recommends, "establish regulations or encourage adoption of standards for decoder formats and the broadcasting, encoding, and transcoding of captioning signals. These standards should require local monitoring and prohibit alteration of signals at any point after broadcast ." (Final Report, page 117)

NCI also applauds the Commission's endorsement of the Line-21 technology. This technology has become the de facto standard in North America for the broadcast, cable, and home video industries for the delivery of the captioning service.

MARKET SIZE AND DECODER DEVELOPMENT

The Commission's Recommendation 42 contains two goals that NCI supports: the development of an integrated TV/decoder, and the widespread availability of decoders to hearing-impaired persons who may not be able to afford the current decoder cost. The methods for achieving these goals are linked together.

It is through the continued development of the technology that a smaller, lower-priced, and multi-purpose captioning module with reduced power consumption will be created. This module can be used not only in integrated TV's available to the consumer at a very small incremental cost, but also in other lower priced decoder products as well, including scaled down versions of the current unit, tunerless decoders, and VCR/decoder combinations. The module is the internal piece of hardware circuitry that "decodes" the captions.

The fact that hundreds of thousands of Federal dollars were needed to develop the first decoder in the 1970's is compelling evidence that private sector funds will not be spent on this activity. The second generation decoder, TeleCaption II (TCII), was developed solely with NCI development funds; no Federal funds were available nor used in the development of TC II. While NCI agrees with the Commission's report that the technology needed to create a lower cost module is available today, we believe that there is no evidence that a viable economic alternative to Federal support for decoder technology development exists today or is on the horizon.

It should be noted that the Commission's report itself is equivocal on the subject of Federal funding of decoder development. Specifically, the report states that "Congress should fund efforts to develop a decoder module that can be installed into any TV set." (Final Report, Page 120) Unfortunately, the wording of Recommendation 42 might be interpreted as contradictory to that statement. At present Federal funds appropriated by the Congress have been used to lower the cost of decoders. While NCI supports the concept of using Federal *subsidy* funds to help broaden the distribution of decoders, Federal *development* funds should continue to be available to improve the technology, as discussed above.

NCI recommends a careful, federally funded approach to this technology development. A successful decoder development would have three major facets to it:

- future decoders would be compatible with prior generations of decoders;
- all decoders would be compatible with the evolving television technologies such as cable TV scrambling systems, TV program time compression systems, and home video anti-duplication devices; and
- future decoders would incorporate the latest technological innovations in order to minimize their cost of manufacture, provide additional features and facilitate their incorporation into TV sets, VCRs, etc.

A closely monitored, federally supported program would also assure compatibility in decoders. Examples of private sector technology development yielding incompatible products include the video recorder industry (VHS vs. Beta formats), and the teletext technology, which has evolved into two incompatible systems (WST vs. NABTS). The closed-captioning service can ill afford this type of conflict which could leave thousands of hearing-impaired persons with incompatible decoders. NCI estimates that the hearing-impaired population has invested approximately $45 million in decoders. Federal involvement in technology development can help protect that investment.

The Commission's report cites the eloquent testimony of ABC, NBC and others in its recognition that **the captioning service can become a truly self-sustaining and viable part of the television industry only when the size of the market - those homes that have decoders - reaches a critical mass.**

While recognizing that the development of a low-cost decoder module which can be integrated into TV's or sold separately in decoders will expand the audience size, NCI is fully aware that there are persons who would never be able to afford a decoder regardless of its cost. Therefore, NCI agrees with the Commission's goal of distributing decoders to those persons in need of assistance. As mentioned in the Commission's findings, NCI has initiated successful programs which have raised private funds to provide decoders at a reduced price to low-income families. One program is DARE (Decoders Advance Reading and Education). This program is designed to make decoders available for $35 to hearing-impaired children whose parents have low incomes. NCI actively seeks contributions from local corporations and foundations to underwrite most of a decoder's cost. Another NCI project is ACCESS (American Corporations Can Enhance Success for Seniors). This program is designed to make decoders available to senior citizens with very limited income for only $10. Its funding and distribution of decoders is identical to that provided by DARE. NCI is proud that to date, almost 2,000 decoders have been made available through these programs.

If the Commission's recommendation of distributing decoders is given Federal support, NCI would urge that, in recognition of the educational benefits of captioning, a priority be placed on providing decoders to all hearing-impaired children. A reasonable plan could be developed and implemented that would provide decoders to this group over a several year period.

As previously mentioned, increased market size is critical to the growth of the captioning service. The Federal government should provide additional funding specifically aimed at developing comprehensive public awareness programs about captioned TV services. These programs should be targeted to:

- parents of hearing-impaired children
- elderly persons and their care providers
- persons learning English as a second language

OTHER ACCESSIBILITY ISSUES

NCI wholeheartedly endorses the Commission's Recommendations 43-45. If these recommendations were to be acted upon, the Federal government would become a role model for the private sector by:

- making Federal proceedings, including House and Senate proceedings, accessible to hearing-impaired persons through a variety of assistive communications devices;
- providing open captions for all instructional materials financed and/or disseminated with Federal funds; and
- captioning televised proceedings of the House and Senate floor activity

It should be noted that over the past six months NCI has worked cooperatively with various Congressional committees investigating the feasibility of providing captioning of floor debates. NCI testified before the Senate Rules Committee last Fall, providing technical information about the captioning service.

Federal support for these efforts will provide an example to others on the importance of making television and other activities accessible for hearing-impaired persons.

TECHNOLOGY

NCI fully supports the Commission's Recommendations 46-49. If successful programs are initiated as the result of Federal funding commitments in the area of technology development, innovations in communication and education will be developed that will surely have profound and positive influence on future generations.

NCI suggests that an important step in the utilization of a technological innovation with great educational potential such as closed captioned television could be achieved if funds under the Education for the Handicapped Act (EHA) were specifically appropriated to provide a decoder for every classroom in the United States where hearing-impaired students are taught.

The precedent for Federal funding of equipment used in the educational setting exists in the broad program initiated approximately 20 years ago by the Captioned Films for the Deaf program, then a part of HEW. Responding to recommendations in the 1965 Babbidge Report, the CFD program provided classrooms in schools for the deaf across the country with overhead projectors, filmstrip projectors, and projection screens. Utilization of these technologies proved successful in educational settings. A similar distribution of this generation's educational technology advance--caption decoders--would have enormous impact on educational programs for hearing-impaired students for years to come.

CAPTIONED FILMS PROGRAM

NCI supports the continued funding of the Captioned Films for the Deaf program and recognizes the substantial contribution that the program has made in improving the educational and social well being of deaf persons in the United States.

In addition to the specific administrative changes addressed in Recommendation 50, NCI suggests that there are additional administrative improvements which could be made in the Captioned Films program by specifically shifting its emphasis towards the Educational Captioned Films collection by:

- providing training materials in the use of educational hardware and software to program administrators for teacher utilization
- establishing awareness activities designed to motivate teachers of deaf students to utilize this valuable resource, particularly those in mainstreamed programs where captioned films are not generally known of or used

- gradually phasing out the captioned entertainment collection by eliminating costly production of new captioned theatrical films, while supporting improvements in the delivery of existing films in that collection and utilizing Federal funds as leverage to gain greater private sector funding of home videos

NCI will continue to work with the Department of Education in a variety of ways to strengthen its overall captioning initiative to bring the greatest amount of accessibility to the most materials in the most cost effective manner.

SUMMARY OF SUGGESTED FEDERAL ACTION PLAN

As previously stated, NCI believes that there are a number of positive actions that the Federal government could take immediately which would assist in the continued growth of the captioning service. These actions should be initiated concurrent with the FCC investigation of the mandatory captioning issue.

NCI respectfully submits the following 4-point plan which, subject to Congressional fiscal restraints, could be initiated in FY 1989. This plan would achieve many of the results that the Commission has recommended.

1. Fund the captioning of national and local programming on a cost sharing basis with private sector broadcasters, cablecasters, producers and local stations - $7.5 million
2. Fund decoder subsidy and development projects - $2 million
3. Fund an aggressive public awareness and public education initiative designed to reach those potential audiences that are as yet untapped beneficiaries of the captioning service - $ 1 million
4. Fund on-going research into caption readability and the effect of captioning on reading - $0.5 million

Rationale

1. Captioning of National and Local Programming

NCI believes that the current funding level set by the Congress for the captioning of national and local programming should be increased from the current $5 million to $7.5 million annually. Funds should go directly to the captioning service, rather than to increased administrative overhead.

While continuing with current programming initiatives in the areas of news, children's programming, syndication, sports, and movies, programming for which private sector captioning sponsorship has been difficult to obtain, such as daytime programming, should be targeted for this increased funding. Elderly persons at home during the day would be primary beneficiaries of this service. NCI suggests that Federal funds should be distributed with the provision that :

- funds are used to maximize the number of captioned programs;
- funds be used to secure private sector funding commitments for captioning from broadcasters, producers, advertisers, and others; and
- funds not be used as a substitute for already established private sector funding commitments.

NCI urges that the Department of Education's recent initiative to fund captioning projects at the local level be expanded. Specifically, seed money being applied to projects to initiate captioning of local news programming will lead to private sector support to sustain the service at the expiration of the initial grant.

Programs of this kind can lead to local stations investing in any of several different types of captioning technologies. This will no doubt lead to widespread accessibility to a part of the television industry which has heretofore been unavailable to hearing-impaired persons. NCI anticipates that with a sustained effort, this initiative would lead to captioning of local news programs in virtually every TV market within a few years.

2. Decoder subsidy and development

NCI recommends that the Federal government continue to fund decoder subsidy activities. However, the emphasis of these activities should be shifted to ensure that persons who cannot afford to purchase a decoder at regular price have the opportunity to obtain one at little or no cost.

In addition, a priority should be placed on providing decoders to all hearing-impaired children. A reasonable plan could be developed and implemented that would provide decoders to this group over a several year period. For instance, at the current subsidy funding level of $1.5 million, about 10,000 decoders could be targeted for distribution to hearing-impaired learners under a long-term loan program managed through school systems. The Commission's report indicates that there were 36,000 deaf students in the United States in 1985-86. (Final Report, Page 10) At this funding level, every student will have received a decoder within a four-year period. After that, the incremental cost of maintaining the program for new students entering school programs would be minimal. In addition, the reliability of the decoder virtually guarantees that students will enjoy full use of their decoders for the life of their school experience.

Federal support for research into refining the captioning technology should also continue. Among the future enhancements to the service which deserve Federal support are adjustable font size, color, and viewer control of caption placement on the screen. In addition, Federal funding is needed to ensure the development of a small and low cost decoder module that can be easily incorporated into television sets at little pass-along cost to the consumers.

3. Public Awareness and Public Education

The Department of Education recently awarded a two-year contract for activities related to increasing public awareness about captioning. While this award is an admirable beginning, NCI urges that a more aggressive program be initiated with Federal support to ensure that the many persons in the United States who could benefit from the captioning service are made aware of the availability of captions and the decoding device. Among the populations which should be targeted are the elderly, those persons with reading and learning problems, and those persons learning English as a second language.

Specific activities should be targeted towards the television industry, making leaders in this field aware of emerging technologies which make captioning more cost-effective. In addition, these persons need to be made aware of the large segments of their audiences which can benefit from the captioning service.

4. Ongoing Research

Over the past eight years, NCI has initiated several research studies into the effectiveness of captioned television as an educational tool. NCI believes that Federal support for wide-ranging additional research into caption readability and the measurement of its effect on the acquisition of reading skills is desirable and necessary. With the audience for the captioning service steadily increasing, and the availability of increased captioned programming for children, additional research should be undertaken that will lead to improved captioning standards and techniques.

CORPORATION FOR PUBLIC BROADCASTING

Donald E. Ledwig
President and
Chief Executive Officer

April 7, 1988

Honorable Major R. Owens
Chairman, Subcommittee on
Select Education
Committee on Education and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It has come to my attention that the Corporation for Public Broadcasting (CPB) was discussed in the hearing your Subcommittee conducted last week on the recommendations of the Commission on the Education of the Deaf. I would like to offer for inclusion in the record of your hearing CPB's views on public broadcasting's service to the hearing impaired. Over the past 21 years, the Corporation and public broadcasting have pioneered a number of services for the hearing impaired, including the development of closed captioning, teletext, and interactive video-computer learning technologies.

Currently, the Corporation for Public Broadcasting maintains a policy requiring that producers -- as an integral part of their production -- caption any program suitable for captioning that receives CPB funding. Some programs are not suitable for captioning, such as dance performances or music concerts. However, all departments within CPB that provide program funds distribute funds according to this CPB policy. We believe this policy could work as a model for other funders and commercial networks.

However, CPB sees many problems that could arise should the FCC require television stations to caption all programming. While we support the need to encourage widespread captioning, as evidenced by our own policy, we do not believe it is practical to impose an across-the-board obligation on television stations to caption all programming. The increased costs resulting from such a regulation could have the undesirable effect of reducing the amount of local programming public television stations could provide.

One possible alternative, that would provide broader access to captioned programming, is the manufacturing of television sets with internal decoding capacity for Line 21 captioning. This

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20 Years of Quality Programming

would reduce the cost of decoders to those who need access and allow many persons with impaired hearing who are not deaf -- like the elderly -- to gain access without the explicit acknowledgment of their handicap that an external decoder implies.

CPB strongly supports a national interest in developing new applications for technology in education. We would hope that any federal support for research and development of technology to be used to serve the deaf would allow public telecommunications entities to apply their experience, capacity and commitment to this important task.

If I can be of any assistance to you in your consideration of the recommendations of the report by the Commission on the Education of the Deaf, please do not hesitate to contact me.

Sincerely,

Donald Ledwig
President and
Chief Executive Officer